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Mitchell A. Mitchell

In the Court of Appeals.

ASAHEL S. LEVY and DAVID S. CODDINGTON, Acting Executors of the Last Will and Testament of URIAH P. LEVY, deceased; and Acting Trustees of said URIAH P. LEVY, *Appellants*,

against

VIRGINIA LEVY, AND OTHERS, *Respondents*.

JOSEPH H. PATTEN, *Atty. for Appellants*.

SAME RESPONDENTS,

against

VIRGINIA LEVY, *Appellant*, AND OTHERS, *Respondents*.

THOMAS HYSLOP, *Atty. for Appellant*.

SAME RESPONDENTS,

against

VIRGINIA LEVY, *Respondent*, AMELIA LEVY, JOSEPH M. LEVY, ELIZA LEVY, GEORGE WASHINGTON LOPES, DAVID C. PEIXOTTO and ABIGAIL PEIXOTTO his Wife, MORTON PHILLIPS, JAMES MURPHY and RACHEL MURPHY his Wife, MAURICE SCOOLER and MARY ANN SCOOLER his Wife, FELIX LIEBSCHUTZ and FANNY LIEBSCHUTZ his Wife, BENJAMIN LEVY, and URIAH P. LEVY, *Appellants*, and others, *Respondents*.

ALEX. W. BRADFORD, *Atty. for Appellants*.

SAME RESPONDENTS,

against

VIRGINIA LEVY, AND OTHERS, *Respondents*, ISAAC M. LEVY, *Appellant*.

WAKEMAN & LATTING, *Attys. for Appellant*.

SAME RESPONDENTS,

against

VIRGINIA LEVY, AND OTHERS, *Respondents*, JONAS P. LEVY, *Appellant*.

ROBERT B. POTTER, *Atty. for Appellant*.

SAME RESPONDENTS,

against

VIRGINIA LEVY, AND OTHERS, *Respondents*, AMELIA P. LEVY, (an Infant) *Appellant*.
EUGENE LAWRENCE, Guardian *ad litem* of Infant AMELIA P. LEVY.

SAME RESPONDENTS,

against

VIRGINIA LEVY, AND OTHERS, *Respondents*; THE CONGREGATIONS SHEARITH ISRAEL and MIKVEH ISRAEL, *Appellants*.

E. B. SMITH, *Atty. for Appellants*.

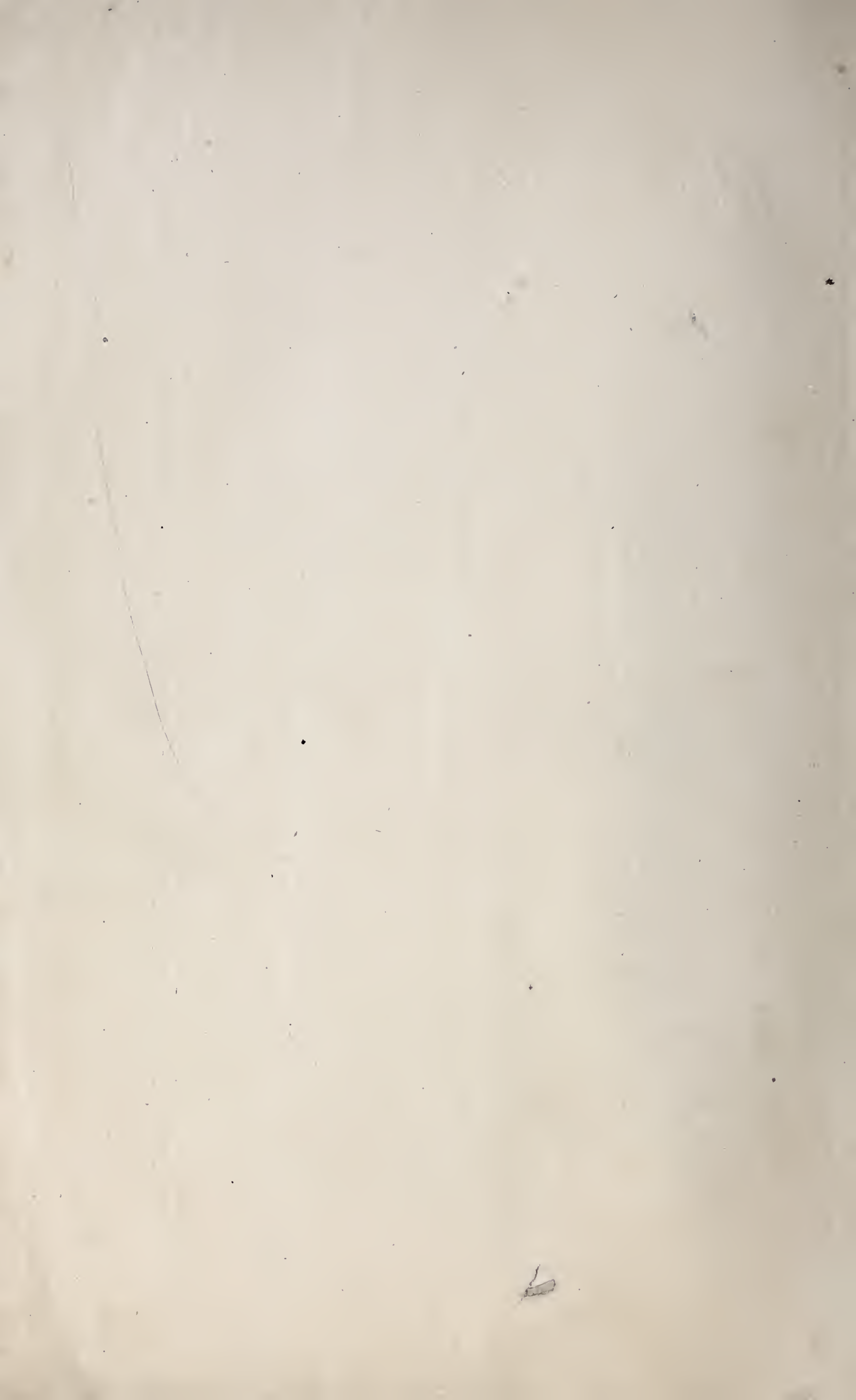
SAME RESPONDENTS,

against

VIRGINIA LEVY, AND OTHERS, *Respondents*, THE PEOPLE OF THE UNITED STATES, *Appellants*.

E. DELAFIELD SMITH, *Atty. for Appellants*.

Case on Appeal to the Court of Appeals.



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Supreme Court,

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OF THE STATE OF NEW YORK,

PLACE OF TRIAL, CITY AND COUNTY OF NEW YORK.

ASAHEL S. LEVY and DAVID S. CODDINGTON, acting Executors of the last will and testament of URIAH P. LEVY, deceased, and acting Trustees of said Uriah P. Levy,

against

VIRGINIA LEVY, AMELIA LEVY, JOSEPH M. LEVY, Eliza Levy, formerly Eliza Hendricks, Isaac M. Levy, Jonas P. Levy, George Washington Lopes, David C. Peixotto and Abigail Peixotto his wife, Morton Phillips, John Murphy and Rachel Murphy his wife, Maurice Scooler and Mary Ann Scooler his wife, Felix Liebschutz and Fanny Liebschutz his wife, Benjamin Levy, Uriah P. Levy and Amelia P. Levy, infant children of Morton P. Levy, deceased; "The Jewish Hospital of the Portugese Jewish Society in New York;" "The Portugese Hebrew Hospital of the City of New York, whose Synagogue is in Crosby street;" "The People of the United States," if they choose to appear; "The People of the State of Virginia," if they choose to appear; "The Portugese Hebrew Congregation of the City of New York, whose Synagogue is in Crosby Street, New York;" "The Old Portugese Hebrew Congregation, whose Synagogue is in Cherry Street, Philadelphia;" and "The Portugese Hebrew Congregation of Richmond, Virginia."

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Statement.

The names of the original parties to this action are cor-

- 4 rectly given in the above title. There has been no change in them during the pendency of the suit, excepting in the name of defendant John Murphy, sued as James Murphy.

This action was commenced October 31, 1862, and was brought by the acting executors and trustees of Uriah P. Levy, deceased, to obtain a judicial construction of such parts of his last will and testament as are set forth in the complaint.

All the defendants appeared, excepting the "Portugese Hebrew Congregation of Richmond, Virginia," and the People of the State of Virginia.

- 5 The summons was served upon the Portugese Hebrew Congregation of Richmond, Virginia, by publication and deposit in the Post Office, under an order duly made and entered in this cause, Nov. 6, 1862.

The answer of the defendants Joseph M. Levy, Amelia Levy, and Eliza Levy, was served December 19, 1862.

The answer of the defendant Virginia Levy was served December 26, 1862.

The answer of the Jews' Hospital in New York was served December 19th, 1862.

- 6 The answer of the Congregation Shearith Israel was served December 19, 1862.

The answer of the infant Amelia P. Levy, by her guardian *ad litem*, was served 31st December, 1862.

The infant Uriah P. Levy came of age after the suit was commenced, and appeared by his counsel.

The answer of the defendant Isaac M. Levy was served December 10th, 1862.

The answer of the defendants, the "People of the United States," was served December 29th, 1862.

The answer of the defendant Jonas P. Levy was served 7
January 14th, 1863.

The trial and hearing took place February 18th, 1863.

Judgment was entered April 21st, 1863, declaring the
devises and bequests, on which construction and judgment
~~was~~^{were} prayed for in the complaint, to be invalid and void.

Appeal to the General Term of the Supreme Court, First
Judicial District, perfected by the plaintiffs April 24th,
1863. 8

The cause was submitted at a General Term of the Su-
preme Court, held at the City Hall in the City of New
York, May 21st, 1863. Judgment was rendered Novem-
ber 30th, 1863, and was entered December 23d, 1863, re-
versing or modifying the judgment at Special Term.

Appeal to the Court of Appeals, perfected by the defend-
ant Virginia Levy January 22d, 1864; by the defendants
Amelia Levy, Joseph M. Levy, Eliza Levy, George Wash-
ington Lopes, David C. Peixotto and Abigail Peixotto his
wife, Morton Phillips, James Murphy and Rachel Murphy 9
his wife, Maurice Scooler and Mary Ann Scooler his wife,
Felix Liebschutz and Fanny Liebschutz his wife, Benjamin
Levy and Uriah P. Levy, January 22d, 1864; by defend-
ant Amelia P. Levy January 22d, 1864; by defendant
Jonas P. Levy January 27th, 1864; by defendant Isaac
M. Levy February 4th, 1864; by defendant The People of
the United States February 27th, 1864; by the plaintiffs
February 27th, 1864.

J u d g m e n t R o l l .

SUPREME COURT,

OF THE STATE OF NEW YORK.

PLACE OF TRIAL, CITY AND COUNTY OF NEW YORK.

ASAHEL S. LEVY and DAVID S. CODDINGTON, acting Executors of the last will and testament of URIAH P. LEVY, deceased, and acting Trustees of said Uriah P. Levy,

against

11 VIRGINIA LEVY, AMELIA LEVY, JOSEPH M. LEVY, Eliza Levy, formerly Eliza Hendericks, Isaac M. Levy, Jonas P. Levy, George Washington Lopes, David C. Peixotto and Abigail Peixotto his wife, Morton Phillips, James Murphy and Rachel Murphy his wife, Maurice Scooler and Mary Ann Scooler his wife, Felix Liebschutz and Fanny Liebschutz his wife, Benjamin Levy, Uriah P. Levy and Amelia P. Levy, infant children of Morton P. Levy, deceased ; "The Jewish Hospital of the Portugese Jewish Society in New York ;" "The Portugese Hebrew Hospital of the City of New York, whose Synagogue is in Crosby Street ;" "The People of the United States," if they choose to appear ; "The People of the State of Virginia," if they choose to appear ; "The Portugese Hebrew Congregation of the City of New York, whose Synagogue is in Crosby Street, New York ;"

12 "The Old Portugese Hebrew Congregation, whose Synagogue is in Cherry Street, Philadelphia ;" and "The Portugese Hebrew Congregation of Richmond, Virginia."

Summons.

To the above Defendants, and each of them :

You are hereby summoned and required to answer the complaint in this action, which was filed in the office of the

clerk of the city and county of New York, at the City 13
Hall, in said city, on the thirty-first day of October, eight-
teen hundred and sixty-two, and to serve a copy of your
answer to the said complaint on the subscriber, at his office,
No. 110 Broadway, in the city of New York, within twenty
days after the service of this summons on you, exclusive of
the day of such service ; and if you fail to answer the said
complaint within the time aforesaid, the plaintiffs in this
action will apply to the Court for the relief demanded in
the complaint.

Dated New York, October 21, 1862.

JOSEPH H. PATTEN,
Plaintiffs' Attorney.

SUPREME COURT,

CITY AND COUNTY OF NEW YORK.

ASAHEL S. LEVY and DAVID S. CODDINGTON, acting
Executors of the Last Will and Testament of
Uriah P. Levy, dec'd, and acting Trustees of
said Uriah P. Levy,

against.

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VIRGINIA LEVY, AMELIA LEVY, JOSEPH M. LEVY,
Eliza Levy, formerly Eliza Hendricks, Isaac
M. Levy, Jonas P. Levy, George Washington
Lopes, David C. Peixotto and Abigail Peixotto
his wife, Morton Phillips, James Murphy and
Rachel Murphy his wife, Maurice Scooler and
Mary Ann Scooler his wife, Felix Liebschutz
and Fanny Liebschutz his wife, Benjamin Levy,
Uriah P. Levy and Amelia P. Levy, infant
children of Morton P. Levy, deceased ; "The

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Jewish Hospital of the Portugese Jewish Soci-
ety in New York ;" "The Portugese Hebrew
Hospital of the City of New York, whose
Synagogue is in Crosby Street;" "The Peo-
ple of the United States," if they choose to ap-
pear ; "The People of the State of Virginia,"
if they choose to appear ; "The Portugese
Hebrew Congregation of the City of New
York, whose Synagogue is in Crosby Street,
New York;" "The Old Portugese Hebrew
Congregation, whose Synagogue is in Cherry
Street, Philadelphia;" and "The Portugese
Hebrew Congregation of Richmond Virginia."

15

COMPLAINT.

The above plaintiffs show to this Honorable Court :

That Uriah P. Levy, late a captain in the United States
Navy, died in the city of New York, on the 22d day of
March, 1862, leaving his widow, the said Virginia Levy,
and the following persons his only surviving next of kin
and heirs-at-law, viz. : Amelia Levy and Eliza Levy, for-
merly Eliza Hendricks, sisters of the said Uriah P. Levy,

Joseph M. Levy, Isaac M. Levy and Jonas P. Levy, brothers of the said Uriah P. Levy, George Washington Lopes and Abigail Peixotto, (wife of David C. Peixotto,) children of Fanny Lopes, a deceased sister of the said Uriah P. Levy, Morton Phillips, Rachel Murphy, wife of James Murphy, Mary Ann Scooler, wife of Maurice Scooler, Fanny Liebschutz, wife of Felix Liebschutz, Benjamin Levy, Uriah P. Levy and Amelia P. Levy, children of Morton P. Levy, a deceased brother of the said Uriah P. Levy. 16

That said city was his place of residence at the time of his death, and for a long time prior thereto. 17

That said Uriah P. Levy left a last will and testament, by which he nominated these plaintiffs, with several others, as executors of his said will.

And these plaintiffs aver, that, on the 9th day of June, 1862, said will was duly admitted to probate by the surrogate of the city and county of New York, and that on the 12th day of June, 1862, they were duly qualified to act as executors of said will by the surrogate of the city and county of New York, said surrogate having sole jurisdiction of said matter, and letters testamentary were by said surrogate duly issued to them only, the other persons named as executors neglecting or refusing to act. And the above plaintiffs are now the sole executors of said will. 18

And these plaintiffs show, that said Uriah P. Levy was possessed of a very large amount of real estate in the city of New York and in the State of Virginia; and, also, of a large amount of personal property. 19

And that said Uriah P. Levy, by his said will, devised and bequeathed the larger portion of said real and personal estate and property, in the following words, viz. :

“ After paying the above legacies and bequests or investing for the same and subject to my wife’s dower and use of furniture I give devise and bequeath my farm and estate at

- 20 Monticello in Virginia formerly belonging to President Thomas Jefferson together with all the rest and residue of my estate real personal or mixed not hereby disposed of wherever or however situated to the People of the United States or such persons as Congress shall appoint to receive it and especially all my real estate in the City of New York In Trust for the sole and only purpose of establishing and maintaining at said farm of Monticello in Virginia an agricultural school for the purpose of educating as practical farmers children of the warrant office of the United States
- 21 Navy whose fathers are dead, said children are to be educated in a plain way in the ordinary elementary branches to fit them for agricultural life and to be supported entirely by this fund from the age of twelve to sixteen and each of them to be brought up to do all the usual work done on a farm, the said farm to be so cultivated by the said boys and their instructors as to raise all they may require to feed themselves and the schoolmaster and one other teacher and one superintendent of the said farm. I also gave and bequeath for the purpose of giving such fuel and fencing for
- 22 said Monticello farm school two hundred acres of wood land of my Washington Farm called the Bank Farm in Virginia the said two hundred acres to be taken off from said Farm hereby devised to my nephew Ashel and to be designated by said Ashel.

- 23 “In establishing said farm-school I especially require that no professorships be established in said school or professors employed in the institution, my intention in establishing this school is charity and usefulness and not for the purpose of pomp. In proportion to the smallness in number of the teachers so will industry prevail. The institution must be kept within the revenue derived from this endowment, and under no circumstances can any part of the real or personal estate hereby devised be disposed of but the rent and income of all said estate real and personal is to be held forever inviolate for the purpose of sustaining this institution. The estate and lands in New York can be leased to great advantage for that purpose.

“Should the Congress of the United States refuse to ac-

cept of this bequest or refuse to take the necessary steps to 24
 carry out this intention I then devise and bequeath all the
 property hereby devised to the People of the State of Vir-
 ginia instead of the People of the United States Provided
 they by acts of their Legislature accept it and carry it out
 as herein directed And should the People of Virginia
 by the neglect of their Legislature decline to accept this
 said bequest I then devise and bequeath all of my said prop-
 erty to the Portugese Hebrew Congregation of the City of
 New York whose Synagogue is in Crosby Street New
 York and the Old Portugese Hebrew Congregation whose 25
 Synagogue is in Cherry Street Philadelphia and the Por-
 tugese Hebrew Congregation of Richmond Virginia Pro-
 vided they procure the necessary legislation to entitle them
 to hold said estate and to establish an Agricultural School
 at said Monticello for the children of said Societies who are
 between the ages of twelve and sixteen years and whose
 fathers are dead and also similar children of any other
 denomination hebrew or christian.

“In order to enable said Hebrew Congregations to hold
 said estate and carry on said farm school a charter will 26
 probably have to be obtained upon the application of said
 Congregations to the Legislature of Virginia and New
 York.

“Should the fund arising from said estate be more than
 sufficient to support and educate the said children of war-
 rant officers of the United States Navy the directors of said
 school are then next to select children of Sergeant Majors
 of the United States Army as the beneficiaries and if a sur-
 plus is still remaining they are then to select from children 27
 of Seaman in the United States Navy whose fathers are
 dead.

“Item I direct my Executors hereinafter named or such
 of them as shall qualify to invest the funds arising from said
 estate in some safe paying stocks as fast as they accumulate
 and to hold the whole of the property and estate hereby de-
 vised and bequeathed for said school and in their hands until
 the proper steps have been taken by Congress or the Legis-

28 lature of Virginia or the said Hebrew Benevolent Congre-
gations to receive the same and discharge said Executors.

“Lastly I appoint the Honorable Benjamin F. Butler,
David V. S. Coddington Ashel S. Levy, Esqr and Joseph
H. Patten Esqr Counsellor at Law in the City of New York
Doctor Joshua Cohen and Jacob I Cohen his brother of
Baltimore George Carr Esquire Attorney at Law Char-
lottesville Virginia and Doctor John B. Blake of Washing-
ton City Executors of this my said Will and Testament and
29 Trustees of said Estate and in case of the death of either of
my Executors or Trustees or their relinquishment or ina-
bility to act I direct that the remaining qualified Executors
or Trustees act without them.”

And these plaintiffs further show, that said will contains
the following provisions, in the following words, viz. :

“I give and bequeath to the Jewish Hospital of the Por-
tugese Jewish Society in New York my valuable painting
of ‘The Children of Israel collecting manna in the desert’
30 by Murcelle.”

“I further give and bequeath to the Portugese Hebrew
Hospital of the City of New York whose Synagogue is in
Crosby Street the sum of one thousand dollars to be paid
them by my Executors.”

That a copy of said will is hereto annexed, and the plain-
tiffs pray that it may be taken as part of this their com-
plaint.

31 And these plaintiffs show to this Honorable Court, that
grave doubts have arisen as to the validity of the said de-
vises and bequests to the People of the United States, and
to the People of the State of Virginia, and to the several
Hebrew Societies mentioned in said will, as the recipients
or trustees of said property and estate, for the purposes
named in said will.

And these plaintiffs show that there are no Hebrew con-
gregations bearing corporate names such as they are desig-
nated by in said will ; and that there is not, and was not at

the time of executing said will, a Jewish Hospital known 32
 as "The Jewish Hospital of the Portuguese Jewish Society
 in New York," as designated in said will; and that there
 is not, and was not at the time of executing said will, a
 hospital known as "The Portuguese Hebrew Hospital of
 the City of New York, whose Synagogue is in Crosby
 street," as designated in said will.

But there is a Portuguese Hebrew congregation whose
 corporate name is "Shearith Israel," whose Synagogue, at
 the time of executing said will, was in Crosby street, in the 33
 city of New York; and there was at said time, and now is,
 as plaintiffs are informed and believe, a Portuguese Hebrew
 congregation, the corporate name of which is "Mikveh
 Israel," whose Synagogue was in Cherry street, in the city
 of Philadelphia; and there was at the time of executing
 said will, and now is, as plaintiffs are informed and believe,
 a Portuguese Hebrew congregation in Richmond, Vir-
 ginia, whose name is "Beth Shalome;" but, whether the
 same is incorporated, or whether there are or are not other
 Portuguese Hebrew congregations in Richmond, Virginia,
 is unknown to these plaintiffs. And there was at the time 34
 of executing said will, and now is, in the city of New York,
 a Jewish Hospital whose corporate name is the "Jews'
 Hospital."

And, inasmuch as the plaintiffs are unable to decide or
 act upon the grave legal questions involved in the construc-
 tion of said will, and are fearful of acting erroneously as
 trustees of said property, they, therefore, pray this Honor-
 able Court to settle and decide as to the validity of said
 devises and bequests, and the rights and duties of the plain-
 tiffs as executors and trustees in relation thereto, and all 35
 other questions incident thereto; that all said questions
 may be settled by the judicial decision of this tribunal;
 and that each of said defendants—if they see fit—may ap-
 pear and answer this complaint, so that a final decision of
 all questions relative to the validity of said devises and
 bequests may be had, the respective rights of all said
 defendants may be permanently settled, and the duties and
 powers of the plaintiffs as executors and trustees defined
 and adjudged.

And the plaintiffs ask for such other or further order or

36 direction in the premises as this case may require, or the Court may think just.

JOSEPH H. PATTEN,
Attorney and of Counsel for Plaintiffs,
No. 110 Broadway.

City and County of New York, ss.:

Asahel S. Levy, being duly sworn, says: That he is one of the plaintiffs in the above-entitled cause; that the foregoing complaint is true to his own knowledge, except as to matters therein stated on information and belief, and as to
37 those matters he believes it to be true.

ASAHEL S. LEVY.

Sworn to before me, this 21st }
day of October, 1862, }

N. W. STUYVST CATLIN,
Notary Public,
City of New York.

Copy Will.

38 Know all Men by these Presents, That I Uriah P. Levy a Captain in the Navy of the United States of America being of sound and disposing mind and memory do make and appoint this instrument as my last Will and Testament hereby revoking all former wills and codicils

39 First The greater part of my estate consisting of landed property in the City of New York in which my beloved wife is entitled to her dower I consider her interest in my estate to be adequate to her full support but I hereby give and bequeath to her as long as she shall remain unmarried the use of all the household furniture of every kind and description either useful or ornamental that I may have at my death including the use of all my plate and plated ware (excepting therefrom each and every article hereinafter specifically bequeathed) and upon her death or marriage I give all said furniture the use of which is bequeathed to her to my Nephew Ashel S. Levy Esquire Attorney at Law in New York.

Second As soon after my death as conveniently can be I 40
 direct my Executors to pay off any debts that may be
 owing by me and to pay the funeral charges and expenses
 including my monument hereinafter named and to pay off
 all the legacies and bequests hereinafter named and for
 that purpose to turn into cash such of my stocks and debts
 due me and coming to them as they may think expe-
 dient

Third To my nephew Ashel S Levy Esquire Counsellor
 at Law in the City of New York I give devise and be- 41
 queath my farm called the Washington Farm in the County
 of Albemarle in the State of Virginia containing about
 ——— acres more or less to him and his heirs for ever in
 fee simple and I also give and bequeath to my said Nephew
 all my Negro slaves and all my horses cattle stock and
 crops on or growing on said farm wherever the same may
 be at my death and I further give and bequeath to said
 Ashel S. Levy the sum of Five Thousand dollars to be
 paid him in cash by my Executors.

And I further give and bequeath to said Ashel S. my 42
 Gold Box with the freedom of the City of New York given
 me by said City.

I give and bequeath to my Brother Joseph M. Levy the
 sum of one thousand dollars in cash and also any mortgage
 I now have or may have on his house and Lot in Baltimore
 Maryland.

U. P. LEVY.

I give and bequeath to my brother Isaac Levy the sum
 of one thousand dollars in cash and also all the debts due
 me by notes by any persons at the time of my death to be 43
 collected for him by my Executors.

I give and bequeath to Mitchel M Levy son of my
 brother Jonas P. Levy the sum of one thousand dollars in
 cash.

I give and bequeath to Mrs. Eliza Hendricks wife of
 Solomon Hendricks of Cincinnati Ohio for her own sepa-

- 44 rate use and maintenance the income of one thousand dollars to be invested by my Executors as Trustees and held for her and the interest to be paid only on her individual receipt at her death the principal to go into my general school fund

I give and bequeath to my Nephew Morton Phillips of New Orleans now in New York my gold hunting watch and the sum of Five hundred dollars in cash.

- 45 I give and bequeath to my friend and kinsman Colonel F Moses of South Carolina my large silver urn formerly belonging to my Uncle Doctor Phillips on which I request him to have engraved "From Captain Uriah P Levy, United States Navy to his kinsman Colonel Franklin Moses State Senator of the State of South Carolina as a testimony of my affection.

- U. P. LEVY.
46 To each of my first cousins residing in Philadelphia I give and bequeath the sum of twenty five dollars a piece to buy a mourning ring in testimony of my regard for them.

I also give and bequeath the sum of Twenty five dollars a piece to each of the following friends for them to purchase a mourning ring and in testimony of my regard for them viz To the Honorable Timothy M Davis of Massachusetts To my friend David V. S. Coddington Esquire Counsellor at Law of the City of New York. To my friend Dr John B. Blake of Washington City.

- 47 And I also give and bequeath to the said Doctor John B. Blake the sum of One thousand dollars in cash.

And I also give and bequeath the sum of Five hundred dollars in cash to Tucker Blake son of the said John B Blake.

I give and bequeath to Captain John B. Montgomery of the United States Navy the sum of One hundred dollars to buy a mourning ring.

I give and bequeath to Captain Laurence Kearney of the United States Navy the sum of One hundred dollars for the purpose of buying a mourning ring. 48

I give and bequeath to Captain Francis Gregory of the United States Navy the sum of One hundred dollars for the same purpose.

I give and bequeath to my good friend Benjamin F. Butler of the City of New York the sum of One hundred dollars for the purpose of purchasing a mourning ring. 49

And I give and bequeath to Lieutenant Peter Turner of the United States Navy the sum of Twenty five dollars to purchase a mourning ring.

I give and bequeath to Lieutenant John Moffit of the United States Navy the sum of twenty five dollars And to Docter Joshua Cohen and to his bother Jacob I Cohen Junior of Baltimore Twenty five dollars each. And to Colonel Mendez Cohen of the United States *Navy* twenty five dollars To Lieutenant Lanier of the United States Navy twenty five dollars. And to Captain William Mervine of the United States *Navy* twenty five dollars and to Commodore Thomas Ap C. Jones of the United States Navy twenty five dollars, the above sum to each to purchase mourning rings as a testimony of my friendship and regard for them. 50

U. P. LEVY.

I give and bequeath to my cousin Mrs. Rebecca Phillips of New York the sum of One hundred dollars and I give and bequeath to her sister Ella Phillips the like sum of One hundred dollars. 51

I direct my Executors hereinafter named and residing in the City of New York to erect to my memory a Monument at Cypress Hill Long Island New York the monument to consist of a full length statute in iron or bronze of the size of life at least standing on a single block of granite sunk three feet in the ground and in the full uniform of a Captain of the United States Navy and holding in its hand a

52 scroll on which shall be inscribed "under this monument" or "In memory of" Uriah P. Levy Captain in the United States Navy Father of the Law for the abolition of the barbarous practice of Corporal punishment in the Navy of the United States" The said monument and its fixtures is to cost at least six thousand dollars and I direct that my body be buried under it if possible.

I further give and bequeath to my friend David V. S. Coddington my diamond anchor breast pin and also my gold
53 faced chronometer.

I give and bequeath to the Jewish Hospital of the Portuguese Jewish Society in New York my valuable painting of "The Children of Israel collecting manna in the desert" by Murchelle I also give and bequeath to the Historical
P. Society of the City of New York my three valuable and
U. rare paintings "The wreck of the Medusa Frigate by Gericault" "The descent of the infant Jesus and Virgin confessing the Bishop of Rouen" and "A Rural Scene" by
54 Carl Brunner or however the same pictures may be named to be deposited by them in their Library.

After paying the above legacies and bequests or investing for the same and subject to my wife's dower and use of furniture I give devise and bequeath my farm and estate at Monticello in Virginia formerly belonging to President Thomas Jefferson together with all the rest and residue of my estate real personal or mixed not hereby disposed of wherever or however situated to the People of the United States or such persons as Congress shall appoint to receive
55 it and especially all my real estate in the City of New York In Trust for the sole and only purpose of establishing and maintaining at said farm of Monticello in Virginia an agricultural school for the purpose of educating as practical farmers children of the warrant office of the United States Navy whose fathers are dead, said children are to be educated in a plain way in the ordinary elementary branches to fit them for agricultural life and to be supported entirely by this fund from the age of twelve to sixteen and each of them to be brought up to do all the usual work done on a

farm, the said farm to be so cultivated by the said boys and 56
 their instructors as to raise all they may require to feed
 themselves and the schoolmaster and one other teacher and
 one superintendent of the said farm—I also give and be-
 queath for the purpose of giving such fuel and fencing for
 said Monticello farm school two hundred acres of wood land
 of my Washington Farm called the Bank Farm in Virginia
 the said two hundred acres to be taken off from said farm
 hereby devised to my Nephew Ashel and to be designated
 bp said Ashel—In establishing said farm school I especially
require that no professorships be established in said school or
 professors employed in the institution, my intention in estab- 57
 lishing this school is charity and usefulness and not for the
 purpose of pomp—In proportion to the smallness in number
 of the teachers so will industry prevail. The institution
 must be kept within the revenue derived from this endow-
 ment and under no circumstances can any part of the real
 or personal estate hereby devised be disposed of but the
 rent and income of all said estate real and personal is to
 be held forever inviolate for the purpose of sustaining this
 institution—The estate and lands in New York can be
 leased to great advantage for that purpose. Should the 58
 Congress of the United States refuse to accept of this
 bequest or refuse to take the necessary steps to carry out
 this intention I then devise and bequeath all the property
 hereby devised to the People of the State of Virginia in-
 stead of the People of the United States Provided they by
 acts of their Legislature accept it and carry it out as herein
 directed And should the People of Virginia by the neglect
 of their Legislature decline to accept this said bequest I
 then devise and bequeath all of my said property to the
 Portugese Hebrew Congregation of the City of New York 59
 whose Synagogue is in Crosby Street New York and the
 Old Portugese Hebrew Congregation whose Synagogue is
 in Cherry Street Philadelphia and the Portugese Hebrew
 Congregation of Richmond Virginia Provided they procure
 the necessary legislation to entitle them to hold said estate
 and to establish an Agricultural School at said Monticello
 for the children of said Societies who are between the
 ages of twelve and sixteen years and whose fathers are
 dead and also similar children of any other denomination,

U. P. LEVY.

60 hebrew or christian In order to enable said Hebrew Congregations to hold said estate and carry on said farm school a Charter will probably have to be obtained upon the application of said Congregations to the Legislature of Virginia and New York.

Should the fund arising from said estate be more than sufficient to support and educate the said children of warrant officers of the United States Navy the directors of said School are then next to select the children of Sergeant
 61 Majors of the United States Army as the beneficiaries and if a surplus is still remaining they are then to select from children of Seaman in the United States Navy whose fathers are dead.

Item I direct my Executors hereinafter named or such of them as shall qualify to invest the funds arising from said estate in some safe paying stocks as fast as they accumulate and to hold the whole of the property and estate hereby devised and bequeathed for said School and in their hands untill the proper steps have been taken by Congress or the
 62 Legislature of Virginia or the said Hebrew Benevolent Congregations to receive the same and discharge said Executors.

U. P. LEVY. I further give and bequeath to the Portugese Hebrew Hospital of the city of New York whose Synagogue is in Crosby Street the sum of one thousand dollars to be paid them by my Executors.

Lastly I appoint the Honorable Benjamin F. Butler David V. S. Coddington Ashel S. Levy Esquire and Joseph
 63 H. Patten Esquire Counsellor at Law in the City of New York Doctor Joshua Cohen and Jacob I Cohen his Brother of Baltimore George Carr Esquire Attorney at Law Charlottesville Virginia and Doctor John B Blake of Washington City Executors of this my said Will and Testament and Trustees of said Estate and in case of the death of either of my Executors or Trustees or their relinquishment or inability to act I direct that the remaining qualified Executors or trustees act without them.

In Witness whereof I have hereto signed my name and 64
 affixed my seal in the City of New York this Thirteenth
 day of May one thousand eight hundred and fifty-eight in
 the presence of the witnesses whose names are hereto signed
 at my request and in my presence they having been first
 informed of the nature of this Instrument.

U. P. LEVY [L. s.]

The within Will was sealed and signed in the presence
 of each of us and in each others presence by Captain Uriah
 P Levy of the United States Navy who is well known to 65
 us and at the time of so subscribing his name and affixing
 his seal the said Captain Levy acknowledged to each of us
 that this Instrument so subscribed and sealed by him was
 his last Will and Testament.

The word "Jacob" written over an erasure—prior to the
 execution. Joseph Gutman Jr. No. 80 West 33d St. N. Y.
 Culver S. Chamberlin No. 80 West 33d St. N. Y. Robert
 Owen No. 255 Bowery New York.

SUPREME COURT.

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, Executors and Trustees of
Uriah P. Levy, and Trustees of
Uriah P. Levy, deceased,

against

67 The CONGREGATION SHEARITH ISRAEL,
(a Religious Corporation in the City
of New York,) sued herein by the
name and style of "The Portuguese
Hebrew Congregation of the City
of New York, whose Synagogue is
in Crosby street, New York," im-
pleaded with Virginia Levy and
others.

ANSWER OF THE CONGREGATION SHEARITH
ISRAEL.

The Trustees of the Congregation Shearith
Israel, a Religious Corporation in the city of
New York, (defendants in the above action,) appear by Jonathan Nathan, their attorney, and for answer to the complaint of the above-named plaintiffs, say :

68 1st. They admit all the facts stated in the said complaint.

2d. They further say, that these defendants were incorporated under the law of the State of New York, providing for the Incorporation of Religious Societies, passed April 5, 1813; and they claim all the powers, rights, and privileges granted, conferred, and secured in and by said law, and of the several laws amendatory thereof and thereto.

3d. They further say that these defendants have been, and are, generally known and commonly described by and

among the Hebrews or Israelites of the city of New York, 69
 as the Portuguese Congregation in said city. That on the
 13th day of May, 1858, and for more than twenty years
 previous thereto, the synagogue of these defendants, in
 which their congregation worshiped, was situated in Crosby
 street, in the city of New York; and that, at the time of
 his decease, the said Uriah P. Levy, the testator, belonged
 to said congregation.

4th. These defendants submit their interests and rights 70
 in the matters in question in this action to the judgment of
 this Court, and pray such decree in the premises as may be
 just and proper.

JONATHAN NATHAN,
 Atty. for Defts.

City and County of New York, ss.:

Isaac Phillips, being duly sworn, says: That he is the
 clerk of the trustees of the congregation Shearith Israel (a
 religious corporation in the city of New York); that the 71
 foregoing answer is true of his own knowledge, except as
 to the matters therein stated to be on information and be-
 lief, and that as to those matters he believes it to be true.

ISAAC PHILLIPS.

Sworn to before me, this 15th }
 day of December, 1862, }

S. C. RARE,
 Notary Public.

72

SUPREME COURT,

STATE OF NEW YORK.

Place of Trial—City and County of New York.

ASAHEL S. LEVY and DAVID S. CODDINGTON, Acting Executors and Trustees, &c., of Uriah P. Levy, deceased,

against

73. AMELIA P. LEVY, impl'd with Virginia Levy and others.

ANSWER OF INFANT, AMELIA P. LEVY.

The answer of the defendant, Amelia P. Levy, an infant under the age of twenty-one years, by Eugene Lawrence, her guardian *ad litem*, appointed by this Court, to the complaint of Asahel S. Levy and others.

The defendant, answering by her guardian *ad litem*, says, as to the allegations in the complaint in this action contained, and as to *each* of such allegations, that she has not any knowledge sufficient to form a belief, and that she is an infant under the age of twenty-one years; and she
74. claims all and whatsoever rights or interests in the property and estate, in the complaint mentioned, she is or may be entitled to, and she submits her interest to the protection of this Honorable Court.

New York, Dec. 31, 1862.

EUGENE LAWRENCE,
Guardian.

City and County of New York, ss. :

Eugene Lawrence, guardian *ad litem* in this action for the defendant, Amelia P. Levy, being duly sworn, doth depose and say: That he is a counsellor of this Court; that

the foregoing answer is true of his own knowledge, except 75
as to the matters which are therein stated on information
and belief, and as to those matters he believes it to be true.

EUGENE LAWRENCE.

Sworn before me, this 31st }
day of December, 1862. }

(Signed)

JOHN T. TOWNSEND,

Notary Public,

In and for the City and County of New York.

SUPREME COURT.

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, Executors and Trustees of
URIAH P. LEVY, deceased,

against

THE JEWS' HOSPITAL in New York,
a Corporation sued herein by the
names and styles of the Jewish
Hospital of the Portuguese Jewish
Society in New York, and the
Portuguese Hebrew Hospital of the
City of New York, whose synagogue
is in Crosby street, New York, im-
pleaded with VIRGINIA LEVY and
others.

76

77

ANSWER OF THE JEWS' HOSPITAL IN NEW YORK.

The defendants, The Jews' Hospital in New York, ap-
pear herein by Jonathan Nathan, their attorney, and
answer the complaint of the above-named plaintiffs as fol-
lows:

1st. They admit all the facts stated in the said com-
plaint.

78 2d. They further say, that they are incorporated under the laws of the State of New York, under the provisions of the act entitled "An Act for the incorporation of benevolent, charitable, scientific, and missionary societies," passed April 12th, 1848; and they claim all the powers, rights, and privileges granted, conferred, and secured in and by said act, and of the several acts amendatory thereto and thereof. That their certificate of incorporation was filed, as aforesaid, on or about the 15th day of January, in the year one thousand eight hundred and fifty-two. That the
 79 preliminary organization of said corporation was made and held through the exertions and influence of Sampson Simson, late of said city, now deceased. That said Simson was its first president. That he was a member of the congregation Shearith Israel, in the city of New York. That said congregation was and is generally known and described among Hebrews and Israelites, in the city of New York, as the Portuguese Congregation. That said congregation, in May, 1858, and for more than twenty-five years previously thereto, had its synagogue in Crosby street, in the city of
 80 New York. That the testator in his lifetime exhibited considerable interest in the welfare of the Hospital of these defendants, contributed liberally to its funds, and participated in its meetings and celebrations.

3d. These defendants further say, that, at the time of the execution of the will of the said Uriah P. Levy, there was no other Jewish Hospital in the city of New York than that of these defendants. That there was no other before its organization, and that there is no other now; and they claim and insist that the gifts and bequests made in and by
 81 said will to "the Jewish Hospital of the Portuguese Jewish Society in New York," and "to the Portuguese Hebrew Hospital in the city of New York, whose Synagogue is in Crosby Street," were severally intended by the said testator for these defendants, and they aver and insist that these defendants are described in said last will with sufficient certainty to entitle them thereto.

Wherefore, these defendants pray that the Court may adjudge and decree that the gifts and bequests made by

said will to "the Jewish Hospital of the Portuguese Jewish Society in New York," and to "the Portuguese Hebrew Hospital of the city of New York, whose Synagogue is in Crosby Street," are good and valid gifts and bequests to these defendants, the Jewish Hospital in New York. 82

JONATHAN NATHAN,
Atty. for the Defts. the Jews' Hospital.

City and County of New York, ss. :

Benjamin Nathan, being duly sworn, says: That he is the President of the Jews' Hospital in New York (a corporation), defendants in the above action; that the foregoing answer is true of his own knowledge, except as to the matters therein stated to be on information and belief, and that as to those matters he believes it to be true. 83

BENJAMIN NATHAN.

Sworn before me this 11th }
day of December, 1862, }

DANIEL SEIXAS,
Commr. of Deeds.

84

N. Y. SUPREME COURT,

CITY AND COUNTY OF NEW YORK, ss. :

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, acting Executors of the
last will and testament of URIAH P.
LEVY, deceased, and acting Trustees
of said Uriah P. Levy,

against

JONAS P. LEVY, impleaded with VIR-
GINIA LEVY and others.

85

ANSWER OF DEFENDANT, JONAS P. LEVY.

The defendant Jonas P. Levy, for answer to the plain-
tiffs' complaint herein, respectfully shows to this Court.

He admits all the facts stated in the said complaint, ex-
cept the allegations therein contained in respect to the
several Hebrew associations or congregations named in
the complaint, in respect to which this defendant denies
that any of them are entitled by law to take any devise or
bequest under said will.

This defendant further says, he is advised and believes,
that the devises and bequests referred to in said complaint,
and in respect to which the plaintiffs ask the construction
of the Court, are, and were at the death of the said Uriah
86 P. Levy, the testator, absolutely void, and that the title to
the said testator's real and personal estate, subject as to the
personal estate to administration in due course of law,
vested at the death of the said testator in his heirs-at-law,
widow and next of kin; and that said executors and trus-
tees had not, and never had, under or by virtue of said
will, any right, title, or interest of, in or to the real estate
of the said testator, or any part or parcel thereof, nor to
the said personal estate, except to distribute the same as if
the testator had died intestate, as to the residue given and
bequeathed by said will in trust, as aforesaid.

Wherefore this defendant demands that this Honorable Court settle and decide as to the validity of the said devises and bequests, and that the same be declared void, and that he have judgment for his costs and expenses herein, out of the proceeds of the said estate. 87

ROBT. B. POTTER,
Atty. Deft. Jonas P. Levy,
61 Wall st.,
New York.

SUPREME COURT.

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, Executors and Trustees of
URIAH P. LEVY, deceased,

against

AMELIA LEVY, JOSEPH M. LEVY, ELIZA
LEVY, formerly ELIZA HENDRICKS,
Impld'd with VIRGINIA LEVY and
others,

88

ANSWER OF DEFENDANT AMELIA LEVY AND
OTHERS.

The defendants, Amelia Levy, Joseph M. Levy, and Eliza Levy, (formerly Eliza Hendricks,) appear in the above-entitled action by Alexander W. Bradford, their attorney, and for answer to the complaint herein, say : 89

1. They admit all the facts stated in the said complaint, except the allegations therein contained in respect to the several Hebrew *associations* or congregations named in the complaint, in respect to which these defendants deny that any of them are entitled by law to take any devise or bequest under said will.

2. These defendants further say, they are advised and believe, that the devises and bequests referred to in said com-

90 plaint, and in respect to which the plaintiffs ask the construction of the Court, are, and were at the death of the said Uriah P. Levy, the testator, absolutely void; and that the title to the said testator's real and personal estate, subject as to the personal estate to administration in due course of law, vested at the death of the said testator in his heirs-at-law, widow and next of kin; and that said executors and trustees have not, and never had, under or by virtue of the said will, any right, title, or interest of, in or to the real
 91 estate of the said testator, or any part or parcel thereof, nor to the said personal estate, except to distribute the same as if the testator had died intestate, as to the residue given and bequeathed by said will, in trust as aforesaid.

ALEXANDER W. BRADFORD,
 Atty. for above Defendants.

City and County of New York, ss. :

Amelia Levy, one of the defendants, being duly sworn,
 92 says : That the foregoing answer is true of her own knowledge, except as to the matters therein stated to be on information and belief, and that as to those matters she believes it to be true.

AMELIA LEVY.

Sworn before me, this 10th }
 day of December, 1862. }

J. VAN NAME,

Commr. of Deeds.

SUPERIOR COURT,

93

CITY AND COUNTY OF NEW YORK.

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, Acting Executors of the
Last Will and Testament of Uriah
P. Levy, deceased, and Acting
Trustees of said Uriah P. Levy,

ag't

VIRGINIA LEVY and others.

94

ANSWER OF DEFENDANT ISAAC M. LEVY.

The defendant, Isaac M. Levy, in answer to the complaint in this action, admits :

That Uriah P. Levy died in the city of New York at the time alleged in the complaint, leaving his widow and the several persons therein named his next of kin and heirs-at-law.

95

That said city of New York was the place of residence of said deceased at the time of his death, and had been for a long time prior thereto.

That he left a will, by which he nominated the plaintiffs and others his executors.

That said will was admitted to probate by the Surrogate of New York at the time in the complaint alleged, and that said plaintiffs are now sole acting executors of said will.

And this defendant further admits, on his information and belief, that said Uriah P. Levy, the said testator, was at the time of his death possessed of a very large amount of real estate in the city of New York and in the State of Virginia, and also of a large amount of personal property.

96

And that by his said will he devised and bequeathed, or undertook to devise and bequeath, the larger portion of his said real and personal property in the words alleged in said complaint, or in words of similar purport ; but for greater

97 certainty as to the contents of said will this defendant craves leave to refer to the original thereof, or to a duly certified and exemplified copy thereof when produced, and to submit the same in its entirety to this Court.

And this defendant admits that grave and serious doubts have arisen as to the validity of the several devises and bequests contained in said will, and in the complaint particularly specified and referred to ; and that the plaintiffs, as executors and trustees under said will, are entitled to the
 98 aid and direction of this Court as to the true construction thereof; and he believes and admits that said plaintiffs cannot safely proceed to execute said alleged will, and the trusts thereby attempted to be created, without first having a judicial construction and interpretation thereof.

And this defendant claims and insists that the several clauses of said will, and the attempted dispositions of real and personal estate set forth and referred to in the complaint and in said will contained, are, and each of them is, repugnant to the statutes of this State relating to powers,
 99 uses and trusts, and to the statute relative to wills of real and personal property, and that the same, by reason thereof, and of other illegalities therein, is and are void and of no effect ; and that as to the estate so attempted to be disposed of, the testator died intestate, and the same should descend and be distributed according to the provisions of the statutes relative to descents of real estate and the distribution of intestates' estates.

Wherefore, this defendant joins in the prayer of the plaintiffs for a judicial construction of the several clauses
 100 and alleged devises referred to in said complaint, and settlement of all the questions arising in relation thereto, and demands that his costs and disbursements, by him paid and incurred in and about the defence and protection of his interests in this behalf, may be paid by the said executors out of said estate.

WAKEMAN & LATTING,
 Attys. for Deft.
 Isaac M. Levy.

City and County of New York, ss. :

101

Isaac M. Levy, the defendant above named, being duly sworn, says : The foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief; and as to those matters he believes it to be true.

ISAAC M. LEVY.

Sworn to before me, this 11th }
day of December, 1862. }

T. B. WAKEMAN,
Commr. of Deeds.

SUPREME COURT.

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, Executors, &c.,

agst.

VIRGINIA LEVY and others.

102

ANSWER OF DEFENDANT VIRGINIA LEVY.

Virginia Levy, the above-named defendant, in answer to the plaintiffs' complaint herein, says, that the devises and bequests and the trusts mentioned and referred to in said complaint, and in respect to which the plaintiffs ask the construction of the Court, are each and every one of them unauthorized by law and void.

103

THOS. HYSLOP,
Atty. for Deft., Virginia Levy.

City and County of New York, ss. :

Virginia Levy, defendant above named, being duly sworn, says : That the foregoing answer is true of her own knowledge, except as to the matters therein stated on information and belief, and as to them she believes it to be true.

VIRGINIA LEVY.

Sworn before me, this 22d day }
of December, 1862. }

JEFFERSON CODDINGTON,
Notary Public.

104

N. Y. SUPREME COURT.

ASAHEL S. LEVY, Acting Executor,
&c.,

agst.

VIRGINIA LEVY, THE PEOPLE OF THE
UNITED STATES, and others.

ANSWER OF THE PEOPLE OF THE UNITED
STATES.

105 The several answer of the People of the United States by
E. Delafield Smith, their attorney, to the complaint of the
plaintiffs herein against these defendants and others, is as
follows, to wit:

These defendants, now and at all times hereafter saving
and reserving to themselves all benefit and advantage of
exception to the said complaint for the many imperfections
contained therein; nevertheless, for answer thereunto, or to
so much and such parts thereof as is material or necessary
106 for them to answer unto, they answering say, that they are
strangers to all and singular the matters and things in the
said complaint contained, and cannot admit or deny the
same, and they leave the plaintiffs to make such proof
thereof as they may be advised. And these defendants
submit their rights in the premises to the Court to make
such order and decree therein as shall be agreeable to
equity.

(Signed)

E. DELAFIELD SMITH,
Attorney for U. S., &c.

SUPREME COURT,

107

CITY AND COUNTY OF NEW YORK.

At a Special Term of this Court, held at the
city of New York, on the 18th day of Feb-
ruary, 1863.

Present—Hon. WILLIAM F. ALLEN, Justice.

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, acting Executors of URIAH
P. LEVY, deceased, &c.,

agst.

VIRGINIA LEVY and others.

108

Judgment.

This action having been instituted for the purpose of ob-
taining a construction of certain portions of the last will
and testament of Uriah P. Levy, deceased; and the same
at this time having come on to be heard upon the pleadings
and proofs of the respective parties; after hearing Mr. 109
Joseph H. Patten, of counsel for the executors, the plain-
tiffs; Mr. Thomas Hyslop, of counsel on behalf of Virginia
Levy, the widow of the deceased; and Mr. A. W. Brad-
ford, of counsel on behalf of Amelia Levy, Joseph M. Levy,
Eliza Levy, Morton Phillips, John Murphy and Rachel his
wife, David C. Peixotto and Abigail Peixotto his wife,
Maurice Scooler and Mary Ann his wife, Benjamin Levy,
Uriah P. Levy, George W. Lopes, Felix Liebschutz and
Fanny his wife, certain of the defendants; Mr. Abraham 110
Wakeman, of counsel on behalf of Isaac M. Levy, one of
the defendants; and Mr. Clarkson N. Potter, of counsel on
behalf of Jonas P. Levy, one of the defendants; and E.
Delafield Smith, of counsel on behalf of the people of the
United States; and Mr. Jonathan Nathan, on behalf of the
Jews' Hospital in the city of New York, the congregations
"Shearith Israel" and "Mikveh Israel;" and Mr. Eugene
Lawrence, guardian *ad litem* for Amelia P. Levy, infant

- 111 defendant; and due consideration being thereupon had: It is ordered, adjudged, and decreed, and this Court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the devise and bequest in said will contained, of the farm and estate at Monticello, in Virginia, together with all the rest, residue, and remainder of the real, personal, or mixed estate of said testator to the people of the United States, or such persons as Congress shall appoint to receive it; or to the people of the State of Virginia, or to the Portuguese Hebrew congregation of the city of New York, whose synagogue is in Crosby street, New York; and the old Portuguese Hebrew congregation, whose synagogue is in Cherry street, Philadelphia, and the Portuguese Hebrew Congregation of Richmond, Virginia; in trust, for the sole and only purpose of establishing and maintaining at said farm at Monticello, in Virginia, an agricultural school, are invalid and void. That the gift of two hundred acres of wood land of the Washington Farm, called the Bank Farm, in Virginia, for the purposes aforesaid, is also invalid and void; that the devise of the estate and lands in the city of New York, for the purposes aforesaid, is invalid and void. That the people of the State of Virginia, the Portuguese Hebrew congregation of the city of New York, whose Synagogue is in Crosby street, in the city of New York, and the old Portuguese Hebrew congregation, whose Synagogue is in Cherry street, Philadelphia, and the Portuguese Hebrew congregation in Richmond, Virginia, have not, nor have any of them, any right, title, or interest whatever, under the will of the testator, in said residuary estate. That the direction to the executors in the said will, to invest the funds arising from said estate in some safe paying stocks as fast as they accumulate, and to hold the whole of the property and estate devised and bequeathed for said school, and in their hands, until the proper steps have been taken by Congress, or the Legislature of Virginia, or the said Hebrew Benevolent congregations to receive the same, and discharge said executors, is invalid and void.

That the said Jews' Hospital in New York, defendants herein, are entitled to the picture of the "Children of Israel Collecting Manna in the Desert," given and bequeathed by

the said testator in his last will to the Jewish Hospital of 115
the Portuguese Jewish Society of New York; and also to
the sum of one thousand dollars, given and bequeathed in
said will, to the Portuguese Hebrew Hospital of the city
of New York, whose Synagogue is in Crosby street.

And it is further ordered, adjudged, and decreed, that as
to the said testator's personal estate, after paying, satisfying,
and discharging the legacies and bequests contained in the
portions of said will preceding said devise and bequest, for
the purpose of establishing and maintaining the aforesaid
school; and also, after paying, satisfying, and discharging 116
the aforesaid legacy of one thousand dollars, therein direct-
ed to be paid to the Jews' Hospital, and after reserving a
sufficient sum for the erection of a monument as provided
in said will, the said Uriah P. Levy died intestate, the same
not having been validly devised and bequeathed, and said
residue belongs to the following persons, his widow and his
only surviving next of kin and heirs-at-law, to wit: Virginia
Levy, his widow, Amelia Levy and Eliza Levy, formerly
Eliza Hendricks, sisters of the said testator, Joseph M. Levy,
Isaac M. Levy, and Jonas P. Levy, brothers of the said tes- 117
tator; George Washington Lopes, and Abigail Peixotto,
wife of David C. Peixotto, children of Fanny Lopes, a de-
ceased sister of said testator; Morton Phillips, Rachel Mur-
phy, wife of John Murphy; Mary Ann Scooler, wife of
Maurice Scooler, Fanny Liebschutz, wife of Feliz Lieb-
schutz; Benjamin Levy, Uriah P. Levy, and Amelia P.
Levy, children of Morton P. Levy, a deceased brother of
said testator; and the said executors are directed to dis-
tribute the same among them according to the statute for
the distribution of the estates of intestates.

That as to the real estate whereof the said testator died
seized, the same, with the exception of the devise of part 118
thereof to Asahel S. Levy, on the death of the testator, de-
scended to and vested in his heirs-at-law, subject to the
dower estate of the defendant Virginia Levy.

And it is further ordered, that out of the funds of the es-
tate in their hands, the said executors pay to the plaintiffs
in this action, on account of their costs therein, one hun-
dred and sixteen $\frac{1}{10}$ dollars; to Virginia Levy, on account
of her costs herein, forty dollars; to Amelia Levy, Joseph

- 119 M. Levy, Eliza Levy, George Washington Lopes, David C. Peixotto and Abigail his wife, Morton Phillips, John Murphy and Rachel his wife, Maurice Scooler and Mary Ann his wife, Felix Liebschutz and Fanny his wife, Benjamin Levy and Uriah P. Levy, on account of their costs, sixty-two $\frac{3}{100}$ dollars; to Eugene Lawrence, guardian *ad litem* of Amelia P. Levy, an infant, forty $\frac{2.5}{100}$ dollars; to Isaac M. Levy, on account of his costs, forty $\frac{2.5}{100}$ dollars; to Jonas P. Levy, on account of his costs, forty $\frac{3.7}{100}$ dollars; to the
 120 United States Attorney for the Southern District of New York, forty dollars; and to the Portuguese Hebrew congregation whose Synagogue is in Crosby street, New York; to the old Portuguese Hebrew congregation whose Synagogue is in Cherry street, Philadelphia, on account of their costs, eighty dollars.

- And it is further ordered, that said executors also pay out of the funds of the estate in their hands, as a further allowance for counsel fees, the sum of seven hundred and fifty dollars to the plaintiffs herein; the sum of five hundred
 121 dollars to the defendant Virginia Levy; the sum of seven hundred and fifty dollars to the defendants Amelia Levy, Joseph M. Levy, Eliza Levy, Morton Phillips, John Murphy, David C. Peixotto and Abigail Peixotto his wife, and George W. Lopes; the sum of five hundred dollars to the defendant Isaac M. Levy; the sum of five hundred dollars to the defendant Jonas P. Levy; the sum of two hundred and fifty dollars to the United States District Attorney for the Southern District of New York; the sum of two hundred and fifty dollars to the Jews' Hospital in the
 122 city of New York, and the Hebrew congregations who have appeared in this action; and the sum of one hundred and fifty dollars to Eugene Lawrence, Esq., as guardian *ad litem* of the infant defendant, Amelia P. Levy.

(A copy.)

H. W. GENET,
Clerk.

(END OF JUDGMENT ROLL.)

SUPREME COURT,

123

OF THE STATE OF NEW YORK.

Place of Trial, City and County of New York.

ASAHEL S. LEVY and DAVID S. CODDINGTON, acting
Executors of the Last Will and Testament of
Uriah P. Levy, dec'd, and acting Trustees of
said Uriah P. Levy,

against

124

VIRGINIA LEVY, AMELIA LEVY, JOSEPH M. LEVY,
Eliza Levy, formerly Eliza Hendricks, Isaac
M. Levy, Jonas P. Levy, George Washington
Lopes, David C. Peixotto and Abigail Peix-
otto his Wife, Morton Phillips, John Murphy
and Rachel Murphy his Wife, Maurice Scooler
and Mary Ann Scooler his Wife, Felix Lieb-
schutz and Fanny Liebschutz his Wife, Benja-
min Levy, Uriah P. Levy and Amelia P. Levy,
infant children of Morton P. Levy, deceased;
"The Jewish Hospital of the Portugese Jew-
ish Society in New York;" "The Portugese
Hebrew Hospital of the City of New York,
whose Synagogue is in Crosby street;" "The
People of the United States," if they choose
to appear; "The People of the State of Vir-
ginia," if they choose to appear; "The Portu-
gese Hebrew Congregation of the City of
New York, whose Synagogue is in Crosby
street, New York;" "The Old Portugese He-
brew Congregation, whose Synagogue is in
Cherry street, Philadelphia;" and "The Por-
tugese Hebrew Congregation of Richmond,
Virginia."

Notice
of
Appeal

125

126

To H. W. GENET, Esq.,

Clerk.

ALEX. W. BRADFORD, Esq.,

Atty. for Defendants, Amelia Levy, Joseph M. Levy
Eliza Levy, and others.

THOMAS HYSLOP, Esq.,

Atty. for Defendant, Virginia Levy.

- 127 JONATHAN NATHAN, Esqr.,
Atty. for Congregations Shearith Israel, Mikveh
Israel, and Jews' Hospital in New York.
- EUGENE LAWRENCE, Esq.,
Guardian *ad litem* of infant defendant, Amelia P.
Levy.
- ROBERT B. POTTER, Esq.,
Atty. for Defendant, Jonas P. Levy.
- MESSRS. WAKEMAN & LATTING,
Atty. for Defendant, Isaac M. Levy.
- 128 E. DELAFIELD SMITH, Esq.,
Atty. for the People of the United States.

Sirs,—Please to take notice, that the plaintiffs appeal to the General Term of this Court from such parts of the judgment entered in the above entitled action, at Special Term, on the 18th day of February, 1863, as are below specified, viz., from that part of the said judgment which reads as follows:

- 129 It is ordered, adjudged and decreed, and this Court, by virtue of the power and authority therein vested, doth order, adjudge and decree, that the devise and bequest in said will contained, of the farm and estate at Monticello, in Virginia, together with all the rest, residue and remainder of the real, personal, or mixed estate of said testator, to the people of the United States, or such persons as Congress shall appoint to receive it, or to the people of the State of Virginia, or to the Portuguese Hebrew congregation of the city of New York, whose synagogue is in Crosby street,
- 130 New York; and the old Portuguese Hebrew congregation, whose synagogue is in Cherry street, Philadelphia, and the Portuguese Hebrew congregation of Richmond, Virginia; in trust, for the sole and only purpose of establishing and maintaining at said farm at Monticello, in Virginia, an agricultural school, are invalid and void.

That the gift of two hundred acres of wood land of the Washington farm, called the Bank farm, in Virginia, for the purposes aforesaid, is also invalid and void; that the

devise of the estate and lands in the city of New York, for 131
the purposes aforesaid, is invalid and void.

That the people of the State of Virginia, the Portuguese Hebrew congregation of the city of New York, whose synagogue is in Crosby street, in the city of New York, and the old Portuguese Hebrew congregation, whose synagogue is in Cherry street, Philadelphia, and the Portuguese Hebrew congregation in Richmond, Virginia, have not, nor have any of them, any right, title, or interest whatever, under the will of the testator, in said residuary estate; that the direction to the executors in the said will to invest the 132
funds arising from said estate in some safe paying stocks, as fast as they accumulate, and to hold the whole of the property and estate devised and bequeathed for said school, and in their hands, until the proper steps have been taken by Congress, or the Legislature of Virginia, or the said Hebrew Benevolent congregations, to receive the same, and discharge said executors, is invalid and void.

That the said Jews' Hospital in New York, defendants herein, are entitled to the picture of the "Children of Israel collecting Manna in the Desert," given and be- 133
queathed by the said testator in his last will to the Jewish Hospital of the Portuguese Jewish Society of New York; and also to the sum of one thousand dollars, given and bequeathed in said will to the Portuguese Hebrew Hospital of the city of New York, whose synagogue is in Crosby street.

And it is further ordered, adjudged and decreed, that as to the said testator's personal estate, after paying, satisfying and discharging the legacies and bequests contained in the portions of said will preceding said devise and bequest for the purpose of establishing and maintaining the afore- 134
said school; and also, after paying, satisfying and discharging the aforesaid legacy of one thousand dollars therein directed to be paid to the Jews' Hospital, and after reserving a sufficient sum for the erection of a monument as provided in said will, the said Uriah P. Levy died intestate, the same not having been validly devised and bequeathed; and said residue belongs to the following persons: his widow and his only surviving next of kin and heirs-at-law, to wit, Virginia Levy, his widow, Amelia Levy and Eliza

- 135 Levy, formerly Eliza Hendricks, sisters of the said testator; Joseph M. Levy, Isaac M. Levy and Jonas P. Levy, brothers of the said testator; George Washington Lopes and Abigail Peixotto, wife of David C. Peixotto, children of Fanny Lopes, a deceased sister of said testator; Morton Phillips, Rachel Murphy, wife of John Murphy, Mary Ann Scooler, wife of Maurice Scooler, Fanny Liebschutz, wife of Felix Liebschutz, Benjamin Levy, Uriah P. Levy, and Amelia P. Levy, children of Morton P. Levy, a deceased brother of said testator. And the said executors
- 136 are directed to distribute the same among them according to the statute for the distribution of the estates of intestates.

That as to the real estate whereof the said testator died seized, the same, with the exception of the devise of part thereof to Asahel S. Levy, on the death of the testator, descended to and vested in his heirs-at-law, subject to the dower estate of the defendant Virginia Levy.

Dated New York, April 24th, 1863.

JOSEPH H. PATTEN,
Atty. for the Plaintiffs.

SUPREME COURT,

137

CITY AND COUNTY OF NEW YORK.

AS²HAEL S. LEVY and DAVID S. CODDINGTON,
acting Executors of the Last Will and Testa-
ment of Uriah P. Levy, dec'd, and acting
Trustees of said Uriah P. Levy,

against

VIRGINIA LEVY, AMELIA LEVY, JOSEPH M.
LEVY, formerly Eliza Hendricks, Isaac M.
Levy, Jonas P. Levy, George Washington
Lopes, David C. Peixotto and Abigail Peix-
otto his wife, Morton Phillips, James Mur-
phy and Rachel Murphy his wife, Maurice
Scooler and Mary Ann Scooler his wife,
Felix Liebeschutz and Fanny Liebschutz
his wife, Benjamin Levy, Uriah P. Levy
and Amelia P. Levy, infant children of
Morton P. Levy, deceased; "The Jewish
Hospital of the Portugese Jewish Society in
New York;" "The Portugese Hebrew
Hospital of the City of New York, whose
Synagogue is in Crosby street;" "The
People of the United States," if they choose
to appear; "The People of the State of
Virginia," if they choose to appear; "The
Portugese Hebrew Congregation of the City
of New York, whose Synagogue is in Crosby
street, New York;" "The Old Portugese
Hebrew Congregation, whose Synagogue is
in Cherry street, Philadelphia;" and "The
Portugese Hebrew Congregation of Rich-
mond, Virginia."

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140

CASE.

This action came on for trial before the Hon. William F. Allen, one of the Justices of this Court, at a Special Term thereof, held at the City Hall in the city of New York, on the 18th day of February, 1863.

The parties appeared by their counsel, as follows:

- 141 JOSEPH H. PATTEN, Esq.,
For the Plaintiffs.
ALEXANDER W. BRADFORD, Esq.,
For the defendants Amelia Levy, Joseph
M. Levy, Eliza Levy, Geo. W. Lopes,
David C. Peixotto and Abigail Peixotto
his wife, Morton Phillips, John Murphy
and Rachel Murphy his wife, Maurice
Scooler and Mary Ann Scooler his wife,
Felix Liebschutz and Fanny Liebschutz
his wife, Benjamin Levy, and Uriah P.
Levy.
- THOMAS HYSLOP, Esq.,
For the defendant Virginia Levy.
- 142 CLARKSON N. POTTER, Esq.,
For the defendant Jonas P. Levy.
ABRAM WAKEMAN, Esq.,
For the defendant Isaac M. Levy.
EUGENE LAWRENCE, Esq.,
For the defendant Amelia P. Levy.
JONATHAN NATHAN, Esq.,
For the Congregations "Shearith Israel"
and "Mikveh Israel," and the "Jews'
Hospital in New York."
E. DELAFIELD SMITH, Esq., U. S. District Attorney,
For the People of the United States.

EVIDENCE.

- 143 *Asahel S. Levy*, called for plaintiffs, being duly sworn,
testified:
- Examined by Mr. Patten:
- Q. Are you one of the executors of this will? (Pro-
ducing will.)
- A. Yes, sir.
- Q. Who is the other one?
- A. Mr. David S. Coddington.
- Q. The only ones that are qualified?
- A. Yes, sir.
- Q. Have you the will there?
- A. Yes, sir.

Q. Letters testamentary attached to it? 144

A. No, sir; I have a certificate of letters testamentary.

(Will, probate, certificate of executorship, and inventory, put in evidence.)

By Mr. Bradford :

Q. You are the nephew of the deceased?

A. I am, sir.

Q. His domicil was in the city of New York?

A. 107 St. Mark's Place, in the city of New York.

Q. He died here? 145

A. He died here on the 22d day of March last, at his house.

Q. You know the state of the family relations: is it correctly stated in the complaint?

A. Yes, sir.

Q. His heirs-at-law and next of ^{kin}~~next~~ are all set out?

A. All set out.

Q. There are one or two mentioned as infants here: have they come of age?

A. I understand that Uriah P. Levy has, since the commencement of this suit, come of age; his brother so informed me; the other infant is Amelia P. Levy; she is not of age. 146

Q. The deceased owned real estate in the city of New York?

A. Yes, sir.

Q. To what amount?

A. Over \$200,000.

Q. How much is the inventory of the personal estate?

A. \$131,606 15. 147

Q. He also owned a farm at Monticello, formerly the residence of President Jefferson?

A. Yes, sir; and also a tract of about 1,500 acres near by there, besides personal property at Monticello, and the Washington Farm, farming implements, cattle, negroes, &c.

Q. What was the estimated worth of that?

A. I set a very high value on it.

Q. Upon the negroes?

148 A. Yes, sir, as well as the other property.

Q. Do you know the Hebrew Congregations mentioned in the will?

A. Not those mentioned in the will, but those to which I think he intended to refer; there are no such Hebrew Congregations as those mentioned in the will.

Q. There are three Hebrew Congregations, in Philadelphia, Richmond, and New York, which you suppose to have been meant by the testator?

A. Yes, sir.

149 Q. Did you serve the summons and complaint in this case upon the Attorney-General of the United States?

A. I did, personally, and he had, previous to that time, been served by mail with a copy of the summons and complaint; so he informed me himself.

Q. Did he say whether he intended to appear?

A. He said he did not.

By Mr. Patten:

150 Q. How nearly do the names of those Hebrew Congregations coincide with the names mentioned in the will?

A. The first is the Jewish Hospital of the Portuguese Jewish Society in New York; there is no such society, but we allege in the complaint as follows:

(Witness reads the 16th, 17th, and 18th folios of the complaint.)

Q. Was Mr. Levy an Israelite himself?

A. He was.

151 Q. Was he acquainted with the individuals who composed these societies?

A. Yes, sir; with those to which we have referred in the latter part.

Q. He knew them?

A. Very well.

Q. Then he was an Israelite himself, and lived in New York, and knew these parties well?

A. Yes, sir.

Q. Do you know under what circumstances this will was made—whether he was going away? Was it in haste? 152

A. Yes, sir; the will bears date the 13th of May, 1858; just before that he had been ordered to the command of the *Macedonian*, in the Mediterranean squadron, and he left the city of New York, I think, the very day after the date of that will; he subsequently took command of the squadron there.

Q. How long was he gone?

A. I think about twenty-six months; he returned from Washington, was here a few days, and during that time the will was executed; then he started off to Boston to take command of the ship. 153

(Mr. Nathan put in evidence original certificate of incorporation of the Jewish Hospital in New York, dated January 15th, 1852.)

By Mr. Nathan:

Q. Was he, in his lifetime, a member of the Jewish Hospital in New York?

A. I don't know whether he was a member, but I know he took a great interest in it, and subscribed to its funds; I believe his name is on the tablet at the entrance; he took a great interest in it, and seemed to be pleased with its progress. 154

Jonathan Nathan sworn: I am a counsellor-at-law in the city of New York; 50 years of age and upwards; I am a member of the congregation of Shearith Israel; and as long as I remember, that congregation has been generally known and distinguished among the Israelites of New York as the Portuguese Congregation, that designation and description applying to the form of service and not to the nationality of the people; that synagogue was in Crosby street from 1834 until about 1859; the first officers of the hospital were members of that congregation, and it was generally spoken of as the hospital of that congregation. 155

Q. (*Court.*) Is there any other Israelitish congregation in that street?

A. No, sir; and no other Portuguese congregation, and

156 none other known as a Portuguese congregation in the city of New York; at the time of the testator's death there was no other Jewish hospital in the city of New York.

By Mr. Patten :

Q. They are generally divided into two kinds ?

A, Yes, sir; one Portuguese or Spanish, and the other Dutch.

Q. That is universal the country over ?

A. Yes, sir.

By Mr. Bradford :

157 Q. The congregation in Philadelphia; what do you know of their incorporation ?

A. I have no evidence of their incorporation.

By Mr. Patten :

Q. You know there is a congregation ?

A. Yes, sir; but I don't know that it is incorporated.

Q. Has it the name it bears in the will ?

A. I can tell you by looking at the papers.

By Mr. Bradford :

158 Q. Do you know that the congregation at Richmond is incorporated ?

A. No, sir; the letter requesting me to appear for the congregation in Philadelphia is signed by the president of the congregation of Mikveh Israel.

(Mr. Bradford put in evidence the laws of Virginia and Pennsylvania.)

(Mr. Hyslop offered in evidence the following authorities: 3 Lee, V. Reports, 451; 13 Grattan, 301.)

(Mr. Bradford offered in evidence the authorities contained in his 23d point.)

Asahel S. Levy, recalled : 159

Q. (*By Mr. Patten.*) Did you make any effort to serve the society in Richmond?

A. I deposited a copy of the summons and complaint in the Post Office, which was subsequently returned by the department to you.

Joseph H. Patten, sworn : I was counsel for Commodore Levy in this matter, and drew the will.

(Mr. Bradford objects. Evidence excluded.) 160

SUPREME COURT

OF THE STATE OF NEW YORK.

Place of Trial City and County of New York.

161 ASAHEL S. LEVY and DAVID S. CODDINGTON,
acting Executors of the Last Will and Tes-
tament of Urah P. Levy, deceased, and
acting Trustees of said Uriah P. Levy,

against

162 VIRGINIA LEVY, AMELIA LEVY, JOSEPH M. LEVY,
Eliza Levy, formerly Eliza Hendricks, Isaac
M. Levy, Jonas P. Levy, George Washington
Lopes, David C. Peixotto and Abigail Peix-
otto his wife, Morton Phillips, John Murphy
and Rachel Murphy his wife, Maurice
Scooler and Mary Ann Scooler his wife,
Felix Liebschutz and Fanny Liebschutz his
wife, Benjamin Levy, Uriah P. Levy and
Amelia P. Levy, infant children of Morton
P. Levy, deceased; "The Jewish Hospital
of the Portugese Jewish Society in New
York;" "The Portugese Hebrew Hospital
of the City of New York, whose Synagogue
is in Crosby Street;" "The People of the
United States," if they choose to appear;
"The People of the State of Virginia," if
they choose to appear; "The Portugese
Hebrew Congregation of the City of New
York, whose Synagogue is in Crosby Street,
New York;" "The Old Portugese Hebrew
163 Congregation, whose Synagogue is in Cherry
Street, Philadelphia;" and "The Portu-
guese Hebrew Congregation of Richmond,
Virginia."

Finding of Facts.

I, William F. Allen, the Justice before whom this action was brought on to be tried, having heard the proofs and allegations of the parties, and having deliberated thereupon, do find and decide as conclusions of fact:

1. That the following material facts and circumstances 164
stated in the complaint are true, to wit :

That Uriah P. Levy, late a Captain in the United States Navy, died in the city of New York, on the 22d day of March, 1862, leaving his widow, the said Virginia Levy, and the following persons his only surviving next of kin and heirs-at-law, viz. : Amelia Levy and Eliza Levy, formerly Eliza Hendricks, sisters of the said Uriah P. Levy, Joseph M. Levy, Isaac M. Levy and Jonas P. Levy, brothers of the said Uriah P. Levy, George Washington Lopes and 165
Abigail Peixotto (wife of David C. Peixotto), children of Fanny Lopes, a deceased sister of the said Uriah P. Levy, Morton Phillips, Rachel Murphy, wife of John Murphy, Mary Ann Scooler, wife of Maurice Scooler, Fanny Liebschutz, wife of Felix Liebschutz, Benjamin Levy, Uriah P. Levy and Amelia P. Levy, children of Morton P. Levy, a deceased brother of the said Uriah P. Levy.

That the infant defendant Uriah P. Levy has, since the commencement of this action, come of age. 166

That said city was the place of residence of the said testator at the time of his death, and for a long time prior thereto.

That said Uriah P. Levy, deceased, left a last will and testament, by which he nominated these plaintiffs, with several others, as executors of said will.

That on the 9th day of June, 1862, said will was duly admitted to probate by the surrogate of the city and county of New York, and that on the 12th day of June, 1862, 167
the plaintiffs were duly qualified to act as executors of said will by the surrogate of the city and county of New York, said surrogate having sole jurisdiction of said matter, and letters testamentary were by said surrogate duly issued to them only, the other persons named as executors neglecting or refusing to act. And the plaintiffs are now the sole executors of said will.

168 That said Uriah P. Levy, deceased, was possessed of a very large amount of real estate in the city of New York and in the State of Virginia ; and, also, of a large amount of personal property.

That the value of the real estate in the city of New York is over two hundred thousand dollars, and the personal estate in the city of New York was inventoried at \$131,606 15.

169 That at the time of his death, the said Uriah P. Levy owned a farm at Monticello, formerly the residence of President Jefferson, and also a tract of about fifteen hundred acres, near by, besides personal property at Monticello, and on the Washington farm, consisting of farming implements, cattle, negroes, &c.

The said real estate and personal property are of great but uncertain value.

That said Uriah P. Levy, by his said will, devised and bequeathed the larger portion of said real and personal estate and property, in the following words, viz. :

170 “ After paying the above legacies and bequests or investing for the same and subject to my wife’s dower and use of furniture I give devise and bequeath my farm and estate at Monticello in Virginia formerly belonging to President Thomas Jefferson together with all the rest and residue of my estate real personal or mixed not hereby disposed of wherever or however situated to the People of the United States or such persons as Congress shall appoint to receive it and especially all my real estate in the city of New York In Trust for the sole and only purpose of establishing
171 and maintaining at said farm of Monticello in Virginia an agricultural school for the purpose of educating as practical farmers children of the warrant office of the United States Navy whose fathers are dead, said children are to be educated in a plain way in the ordinary elementary branches to fit them for agricultural life and to be supported entirely by this fund from the age of twelve to sixteen and each of them to be brought up to do all the usual work done on a farm, the said farm to be so cultivated by the said boys and

their instructors as to raise all they may require to feed 172
 themselves and the schoolmaster and one other teacher and
 one superintendent of the said farm. I also give and be-
 queath, for the purpose of giving such fuel and fencing for
 said Monticello farm school two hundred acres of wood-
 land of my Washington Farm called the Bank Farm in
 Virginia the said two hundred acres to be taken off from
 said farm hereby devised to my nephew Ashel and to be
 designated by said Ashel.

“In establishing said farm school I especially require that
 no professorships be established in said school or professors 173
 employed in the institution my intention in establishing
 this school is charity and usefulness and not for the purpose
 of pomp. In proportion to the smallness in number of the
 teachers so will industry prevail. The institution must be
 kept within the revenue derived from this endowment and
 under no circumstances can any part of the real or personal
 estate hereby devised be disposed of but the rent and in-
 come of all said estate real and personal is to be held for-
 ever inviolate for the purpose of sustaining this institution.
 The estate and lands in New York can be leased to great 174
 advantage for that purpose.

“Should the Congress of the United States refuse to ac-
 cept of this bequest or refuse to take the necessary steps to
 carry out this intention I then devise and bequeath all the
 property hereby devised to the People of the State of Vir-
 ginia instead of the People of the United States provided
 they by acts of their Legislature accept it and carry it out
 as herein directed And should the People of Virginia
 by the neglect of their Legislature decline to accept this
 said bequest I then devise and bequeath all of my said prop- 175
 erty to the Portugese Hebrew Congregation of the city of
 New York whose Synagogue is in Crosby street New
 York and the Old Portugese Hebrew Congregation whose
 Synagogue is in Cherry street Philadelphia and the Portu-
 gese Hebrew Congregation of Richmond Virginia Pro-
 vided they procure the necessary legislation to entitle them
 to hold said estate and to establish an Agricultural School
 at said Monticello for the children of said Societies who are

176 between the ages of twelve and sixteen years and whose fathers are dead and also similar children of any other denomination hebrew or christian.

“In order to enable said Hebrew Congregations to hold said estate and carry on said farm-school a charter will probably have to be obtained upon the application of said Congregations to the Legislature of Virginia and New York.

177 “Should the fund arising from said estate be more than sufficient to support and educate the said children of warrant officers of the United States Navy the directors of said school are then next to select children of Sergeant Majors of the United States Army as the beneficiaries and if a surplus is still remaining they are then to select from children of Seaman in the United States Navy whose fathers are dead.

178 “Item I direct my executors hereinafter named or such of them as shall qualify to invest the funds arising from said estate in some safe paying stocks as fast as they accumulate and to hold the whole of the property and estate hereby devised and bequeathed for said school and in their hands until the proper steps have been taken by Congress or the Legislature of Virginia or the said Hebrew Benevolent Congregations to receive the same and discharge said executors.

179 “Lastly I appoint the Honorable Benjamin F. Butler David V. S. Coddington Ashel S. Levy, Esq and Joseph H. Patten Esq counsellor at law in the city of New York Doctor Joshua Cohen and Jacob I Cohen his brother of Baltimore George Carr Esquire attorney at law Charlottesville Virginia and Doctor John B. Blake of Washington city executors of this my said will and testament and trustees of said estate and in case of the death of either of my executors or trustees or their relinquishment or inability to act I direct that the remaining qualified Executors or Trustees act without them.”

The said will contains, also, the following provision, in 180
the following words, viz. :

“ I give and bequeath to the Jewish Hospital of the Portuguese Jewish Society in New York, my valuable painting of ‘ The Children of Israel collecting Manna in the Desert, by Murcelle.’ ”

“ I further give and bequeath to the Portuguese Hebrew Hospital of the City of New York, whose Synagogue is in Crosby street, the sum of one thousand dollars, to be paid them by my executors.” 181

That there are no Hebrew Congregations bearing corporate names such as they are designated by in said will ; and that there is not, and was not at the time of executing said will, a Jewish hospital known as “ The Jewish Hospital of the Portuguese Jewish Society in New York,” as designated in said will ; and that there is not, and was not at the time of executing said will, a hospital known as “ The Portuguese Hebrew Hospital of the City of New York,” whose Synagogue is in Crosby street,” as designated in 182
said will.

But there is a Portuguese Hebrew Congregation whose corporate name is “ Shearith Israel,” whose Synagogue at the time of executing said will was in Crosby street, in the city of New York ; and there was at said time, and now is, a Portuguese Hebrew Congregation, the corporate name of which is “ Mikveh Israel,” whose Synagogue was in Cherry street, in the city of Philadelphia ; and there was at the time of executing said will, and now is, a Portuguese Hebrew Congregation in Richmond, Virginia, whose name is 183
Beth Shalome ; and there was at the time of executing said will, and now is, in the city of New York, a Jewish Hospital whose corporate name is the “ Jews’ Hospital,” in New York, which was incorporated the 15th day of January, 1852, and was intended by the testator under the names of the “ Jewish Hospital of the Portuguese Jewish Society in New York,” and the “ Portuguese Hebrew Hospital of the City of New York, whose Synagogue is in Crosby street ;”

184 and that the gifts and bequests to the last-mentioned hospitals by name, were intended for the said Jews' Hospital.

That by the law of Virginia, the said devise of the real estate in Virginia is void.

That the intent of the testator in relation to the trusts attempted to be created cannot be carried out.

And I find as conclusions of law—

185 1. That the gifts and bequests of a painting and of one thousand dollars, intended for the Jews' Hospital in New York, are valid gifts to said Jews' Hospital, and should be paid and delivered to it.

2. That the devise and bequest of the "rest and residue of the estate, real, personal, or mixed," of the testator to the People of the United States, or such persons as Congress shall appoint to receive it, and provisionally and in succession to the People of the State of Virginia and certain Hebrew Congregations named, upon the trusts specified in the will, are void.

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3d. That that portion of the estate of the testator attempted to be disposed of by the will as the "rest and residue," and upon the trusts referred to, upon the death of the testator, descended to and vested in his widow, heirs-at-law and next of kin, entitled under the statutes of descent and distribution of this State, the executors taking no estate or interest therein.

4th. That the devise of the Monticello estate and farm, and two hundred acres of land in the same clause, also fails.

W. F. A.

SUPREME COURT.

187

NEW YORK SPECIAL TERM, FEBRUARY, 1863.

ASAHEL S. LEVY and *al.*, Executors,
&c., &c., of URIAH P. LEVY, de-
ceased,

vs.

VIRGINIA LEVY and *al.*

ALLEN, J.—My conclusions are—

1. That “The Jews’ Hospital in New York,” a corpora- 188
tion created under the laws of this State, and located in the
city of New York, was intended by the testator under the
names of “The Jewish Hospital of the Portuguese Jewish
Society in New York,” and “The Portuguese Hebrew Hos-
pital of the City of New York, whose Synagogue is in Cros-
by Street,” mentioned in his Will, and that the gifts and
bequests to the last-mentioned Hospitals by name were in-
tended for and are good and valid gifts and bequests to the 189
said Jews’ Hospital, and should be paid and delivered to it.

2. That the devise and bequest of the rest and residue
of the estate, real and personal, of the testator, to the People
of the United States, and provisionally and in succession, to
the People of the State of Virginia, and certain Hebrew
congregations named, upon the trusts specified in the will,
are void.

(1.) The parties named as donees had and have no capa- 190
city to take under the will, either upon the trusts men-
tioned or otherwise.

(2.) The trusts are unauthorized by law, the purposes not
being among those for which express trusts may be created.

The trusts therefore fail, and no estate vests in the
trustees.

- 191 (3.) The trust attempted to be created is in contravention of the statute against perpetuities—that is, is in terms a trust in perpetuity, and alienation of the estate devised is forever prohibited.

The estate would be forever inalienable in the hands of the trustees.

- 192 (4.) The will directs the accumulation of the estate by the executors, and necessarily makes every part of it inalienable, until Congress, or the Legislature of Virginia, or the Hebrew Congregations named in succession as trustees, shall take action and the proper steps to claim and receive the same.

Thus the power of alienation is restrained, and accumulation directed for a time indefinite, and which does not depend upon lives in being, and the accumulation is not for the benefit of minors.

- 193 This direction is clearly illegal.

(5.) The time for the vesting of the estate in the donees and trustees is equally uncertain, as it depends upon the same contingencies. This postponement of the vesting would be fatal to this part of the will without the direction to accumulate in the mean time.

- 194 3. That that portion of the estate of the testator, attempted to be disposed of by the will, as “the rest and residue,” and upon the trusts referred to, upon the death of the testator descended to and vested in his heirs-at-law and next of kin, entitled under the statute of descents and distribution of this State, the executors taking no estate or interest therein.

4. That the devise of the Monticello estate and farm, and the two hundred acres of land in the same State, also fails.

(1.) For the same reasons that render invalid the devise and bequest of the rest and residue of the estate, some of which are briefly stated above.

(2.) The principal trust failing, and to carry out which the Virginia property was devised, the devise of the latter fails as an incident to it. The intent of the testator cannot be carried out, and therefore every part of the scheme fails. 195

Judgment may be entered in accordance with these views. The costs of the parties, with proper allowances, to be paid out of the estate.

W. F. A.

(A copy.)

H. W. GENET,
Clerk.

196

Judgment was thereupon entered, (see the same, *ante*, p. 33,) and the plaintiffs have appealed therefrom and filed exceptions thereto, and for the purposes of the said appeal this case is made, with liberty to turn the same into a bill of exceptions.

Jos. H. PATTEN,
Att'y for Plaintiffs.

197

At a General Term of the Supreme Court of the State of New York, held at the City Hall, in the city of New York, on the thirtieth day of November, A. D. 1863.

Present—Hon. JOSIAH SUTHERLAND,
JOSEPH MULLIN,
THOMAS W. CLERKE,
Justices.

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, acting Executors of URIAH
P. LEVY, Deceased,

Appellants,

198

against

VIRGINIA LEVY and others,
Respondents.

Modification of
Judgment.

199

The appeal in this action, from the judgment entered herein, on the 21st day of April, 1863, under the direction of the Hon. Wm. F. Allen, Justice, coming on to be heard; and on hearing Mr. J. H. Patten, on behalf of the plaintiffs, appellants, Mr. Hyslop, on behalf of Virginia Levy, respondent, Mr. A. W. Bradford, of counsel for Amelia Levy, Joseph M. Levy, Eliza Levy, Morton Phillips, John Murphy and Rachel his wife, David C. Peixotto, and Abigail his wife, Maurice Scooler and Mary Ann his wife, Benjamin Levy, Uriah P. Levy, George W. Lopes, Felix Leibschutz and Fanny his wife, certain of the respondents, Mr. A. Wakeman, of counsel for Isaac M. Levy, respondent, and Mr. C. N. Potter, of counsel for Jonas P. Levy, respondent, and Mr. E. Delafield Smith, of counsel for the people of the United States, respondents, and Mr. Jonathan Nathan, on behalf of the Jews' Hospital in the city of New York, and the congregations "Shearith Israel" and Mikveh Israel," respondents, and Mr. Eugene Lawrence, guardian *ad litem* of Amelia P. Levy, and due consideration being had thereon:

It is ordered, adjudged, and decreed, and this Court, by

virtue of the power and authority therein vested, doth declare, adjudge, and decree— 200

That the devise and bequest in or by said will of the farm and estate at Monticello, in Virginia, and of all the rest and residue of the testator's estate (not thereby otherwise disposed of) to the people of the United States, or such persons as Congress shall appoint to receive it, upon the trust, and for the charitable purpose therein mentioned, is to be deemed and considered a devise to the Government of the United States; and that the property and estate thus devised and bequeathed, would have vested in the Government of the United States, when the will took effect, provided Congress had the constitutional power to pass a law or laws providing for the execution of such trust and charitable purpose, but liable, nevertheless, to be defeated or divested by want of action on the part of Congress, or by the neglect of Congress to pass such law or laws, within a reasonable time, after notice or knowledge of such devise or bequest; but that Congress not having the constitutional power to pass any law or laws providing for the execution of such trust and charitable purpose at Monticello, in the State of Virginia, such devise and bequest to the Government of the United States, did not, and cannot take effect, and was and is void. 201 202

It is further declared and adjudged, it appearing from the will to have been the intention of the testator to devise and bequeath the same property and estate to the Government of the State of Virginia upon the said trust, and for the same charitable purpose, if the Government of the United States did not, or could not, take under the devise and bequest to it, that such property or estate vested in the Government of the State of Virginia upon such trust and for such charitable purpose, when the will took effect, under the devise and bequest in the said will to the people of the State of Virginia, but liable, nevertheless, to be defeated or divested by want of action on the part of the legislature of Virginia, or by the neglect of such legislature to pass such a law or laws providing for the execution of said trust and charitable purpose within a reasonable time after notice of such devise and bequest; and that the devise and bequest to the people of the State of Virginia is to be 203

204 deemed and considered to be a devise and bequest to the Government of that State in trust, for the charitable purpose mentioned in the will, and was and is a valid devise and bequest.

It is further declared and adjudged, that the devises and bequests in the said will to the Government of the United States, and to the Government of the State of Virginia, were made subject to the direction given in the will to the executors, to invest the funds arising from the property and estate thus devised, and to hold the same until proper steps should be taken by Congress or the Legislature of
 205 Virginia, and subject to the express or implied power of the executors, contained or implied in this direction or provision of the will, to collect and receive the income, rents, and profits of the property and estate thus devised, real as well as personal, until the proper steps have been taken, by the legislature of Virginia, to receive the same, and discharge the said executors; and that such property and estate vested in the government of the State of Virginia, at the time the will took effect, subject to such direction to, and power of the executors.

206 It is further declared and adjudged, that the direction thus given to the executors to invest and hold the funds, income, rents, and profits arising from the property and estate so devised in trust, until the proper steps have been taken by the Legislature of the State of Virginia to receive the same, and discharge said executors, if followed, would involve or produce an unlawful and unauthorized accumulation of such funds, income, rents, and profits, and that such direction was and is, therefore, void. And that such funds, income, rents, and profits, until the proper steps have been taken, by the Legislature of Virginia, to receive
 207 the same, and discharge said executors, must be looked upon and considered as not having been disposed of by the testator, in or by his will; and that the income arising from the personal property or estate thus devised and bequeathed, until the proper steps have been taken, by the Legislature of the State of Virginia, to receive the same, and discharge said executors, should be paid to the widow and next of kin of the testator, according to the statute of distribution; and that the income, rents, and profits arising

from the real estate thus devised, until the proper steps 208
 have been taken, by the Legislature of the State of Virginia,
 to receive the same, and discharge the said executors,
 should be paid to the heirs-at-law of the testator, according
 to the statute of descents, subject to his widow's right of
 dower therein, and the provision or declaration in the will
 in relation thereto, and her right or interest in such in-
 come, rents, and profits incident to such right of dower.

And it is further declared and adjudged, that there is
 not in the provision of the will containing the direction
 and power to the executors, as to the income of the prop-
 erty and estate thus devised and bequeathed, nor in any 209
 other provision of the will, any devise or bequest, express
 or implied, of the *corpus* of the said property and estate,
 until the proper steps by Congress or the Legislature of
 Virginia to receive the same, and discharge the exec-
 utors.

And it is further declared and adjudged, that it would
 be premature and inexpedient to adjudge or determine,
 at this time, in this action, whether the Portuguese Hebrew
 congregations, of the city of New York, the old Portuguese
 Hebrew congregation whose Synagogue is in Cherry street, 210
 Philadelphia, and the Portuguese Hebrew congregation of
 Richmond, Virginia, mentioned in the will, or the associa-
 tions, congregations, or corporations intended by such des-
 ignations were, or are, corporations capable of taking
 under the contingent devise to them of the said residue of
 the testator's real and personal estate; or whether such
 contingent devise or bequest was or is valid.

And it is further declared and adjudged, that the devise
 in the will, of two hundred acres of woodland of the Wash- 211
 ington farm, is to be considered, and given effect to, as if
 it had been included in the devise of "the rest and the
 residue" of the testator's real and personal estate, before
 referred to.

And it is further ordered, declared, and adjudged, that
 the judgment or decree of the Special Term in this action
 be reversed so far as it is inconsistent herewith, and in all
 other respects affirmed.

And it is further ordered, that, out of the funds of the
 estate in their hands, the said executors pay to the plaintiffs,

212 the appellants, on account of their costs herein, the sum of one hundred and thirty-seven $\frac{60}{100}$ dollars.

To Virginia Levy, on account of her costs, the sum of forty-nine $\frac{58}{100}$ dollars.

To Amelia Levy, Joseph M. Levy, Eliza Levy, George W. Lopez, David C. Piexotto and Abigail his wife, Maurice Scooler and Mary Ann Scooler his wife, Felix Liebschutz and Fanny his wife, Benjamin Levy, and Uriah P. Levy, on account of their costs, seventy dollars.

To Eugene Lawrence, guardian *ad litem* of Amelia P. Levy, an infant, forty-five dollars.

213 To Isaac M. Levy, on account of his costs, forty-nine $\frac{58}{100}$ dollars.

To Jonas P. Levy, on account of his costs, forty-nine $\frac{58}{100}$ dollars.

To the United States District Attorney for the Southern District of New York, forty-five dollars.

To the Jews' Hospital in the city of New York, and to the Hebrew Congregations who have appeared in this action, on account of their costs, ninety-two $\frac{29}{100}$ dollars.

214 And it is further ordered, that said executors also pay out of the funds of the estate in their hands, as a further allowance for counsel fees, to the plaintiffs, the sum of seven hundred and fifty dollars, to Virginia Levy five hundred dollars, to Amelia Levy, Joseph M. Levy, Eliza Levy, George Washington Lopez, David C. Piexotto and Abigail his wife, Morton Phillips, John Murphy and Rachel his wife, Maurice Scooler and Mary Ann his wife, Felix Liebschutz and Fanny his wife, Benjamin Levy, and Uriah P. Levy, one thousand dollars.

To Eugene Lawrence, guardian *ad litem* of the infant defendant, Amelia P. Levy, two hundred dollars.

215 To Isaac M. Levy five hundred dollars, to Jonas P. Levy five hundred dollars, to the United States District Attorney for the United States for the Southern District of New York, five hundred dollars.

To the Jews' Hospital in the city of New York and the Hebrew Congregations aforesaid, five hundred dollars.

(A copy.)

H. W. GENET,
Clerk.

(Endorsed)—Filed Dec'r 23d, 1863.

(END OF JUDGMENT ROLL.)

SUPREME COURT,

216

CITY AND COUNTY OF NEW YORK.

<p>ASAHEL S. LEVY and DAVID S. COD- DINGTON, acting Executors of the last Will and Testament of URIAH P. LEVY, deceased, and acting Trustees of said URIAH P. LEVY, <i>agst.</i> VIRGINIA LEVY and others.</p>	}	<p>Notice of Appeal of the Plaintiffs.</p>
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Gentlemen,—Please to take notice, that the plaintiffs
appeal to the Court of Appeals of the State of New York, 217
from all parts of the judgment rendered in this action by
this Court at a General Term thereof, held in the First Ju-
dicial District, on the 30th day of November, 1863, and
filed and entered on the 23d day of December, 1863.

Dated New York, Feb. 25, 1864.

Yours, &c.,

JOS. H. PATTEN,
Attorney for Plffs.

TO H. W. GENET, Esq.,
Clerk of this Court.

E. DELAFIELD SMITH, Esq.,
Attorney for the People of the United States.

ALEX. W. BRADFORD, Esq., 218
Attorney for Defendants Amelia Levy and others.

E. B. SMITH, Esq.,
Attorney for Defendants Congregations
“Shearith Israel,” and “Mikveh Israel.”

EUGENE LAWRENCE, Esq.,
Guardian *ad litem* of Deft. Amelia P. Levy

ROBERT B. POTTER, Esq.,
Attorney for Defendant Jonas P. Levy.

THOMAS HYSLOP, Esq.,
Attorney for Defendant Virginia Levy.

MESSRS. WAKEMAN & LATTING,
Attorneys for Defendant Isaac M. Levy.

SUPREME COURT,
CITY AND COUNTY OF NEW YORK.

<p>ASAHEL S. LEVY and DAVID S. COD- DINGTON, acting Executors, &c., of the last Will and Testament of URIAH P. LEVY, deceased, <i>agst.</i> VIRGINIA LEVY and others.</p>	}	<p>Notice of Appeal of the People of the United States.</p>
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220 Sirs,—Take notice, that the defendants, the People of the United States, appeal to the Court of Appeals of the State of New York, from all parts of the judgment rendered in this action, by this Court, at a General Term thereof, held in the First Judicial District on the 30th day of November, 1863, and filed and entered on the 23d day of December, 1863; *excepting* from the operations of this appeal so much of said judgment as directs the payment of costs and allowances to the respective parties.

Dated New York, Feb. 25th, 1864.

E. DELAFIELD SMITH,
Attorney for the Defendants the
People of the United States.

HENRY W. GENET, Esq.,
Clerk of this Court,

221 JOSEPH H. PATTEN, Esq.,
Attorney for the Plaintiffs.

ALEX. W. BRADFORD, Esq.,
Attorney for the Defendants Amelia Levy and others.

EUGENE LAWRENCE, Esq.,
Guardian *ad litem* of Amelia P. Levy.

E. B. SMITH, Esq.,
Attorney for Defendants Congregations
“Shearith Israel,” and “Mikveh Israel.”

THOMAS HYSLOP,
Atty. for Defendant Virginia Levy.

Messrs. WAKEMAN & LATTING,
Attorneys for Defendant Isaac M. Levy.

ROBERT B. POTTER, Esq.,
Attorney for Defendant Jonas P. Levy.

SUPREME COURT.

222

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, acting Executors of the
last Will and Testament of URIAH
P. LEVY, deceased, and acting
Trustees of said URIAH P. LEVY,
Plaintiffs,

agst.

VIRGINIA LEVY and others,
Respondents.

Notice of Appeal
of the Defendants
Amelia Levy and
others.

Sir,—Please take notice, that the defendants, Amelia Levy, Joseph M. Levy, Eliza Levy, Morton Phillips, John Murphy and Rachel his wife, David C. Peixotto and Abigail his wife, Maurice Scooler and Mary Ann his wife, Benjamin Levy, Uriah P. Levy, George W. Lopez, Felix Leibschutz and Fanny his wife, respondents, appeal to the Court of Appeals from the judgment entered herein, at the General Term of the Supreme Court, on the 23d day of December, 1863, *excepting* so much thereof as directs the payment of costs and allowances to the respective parties. 223

Dated New York, Jan. 22d, 1864.

A. W. BRADFORD,

Attorney for Defendants Amelia Levy and others.

To H. W. GENET, Esq.,

Clerk. 224

JOSEPH H. PATTEN, Esq.,

Atty. for Plffs.

THOS. HYSLOP,

Atty. for Deft. Virginia Levy.

E. B. SMITH, Esq.,

Atty. for the Congregations "Mikveh
Israel," "Shearith Israel," and
Jews' Hospital in New York.

EUGENE LAWRENCE, Esq.,

Guardian *ad litem* of infant De-
fendant Amelia P. Levy.

- 225 ROBERT B. POTTER, Esq.,
 Atty. for Defendants Jonas P. Levy.
 WAKEMAN & LATTING,
 Attorneys for Defts. Isaac M. Levy.
 E. DELAFIELD SMITH,
 Atty. for the People of the United States.

SUPREME COURT

- | | | | |
|-----|--|---|---|
| 226 | ASAHEL S. LEVY and DAVID S. CODDINGTON, acting Executors of the last Will and Testament of URIAH P. LEVY, deceased, and acting Trustees of said URIAH P. LEVY,
<div style="text-align: right;">Plaintiffs,</div> <div style="text-align: center; margin-top: 10px;"><i>agst.</i></div> <div style="text-align: center;">VIRGINIA LEVY and others,
 Respondents.</div> | } | Notice of Appeal
of the Defendant,
Virginia Levy. |
|-----|--|---|---|

Sirs,—Please take notice that the defendant, Virginia Levy, respondent, appeals to the Court of Appeals from the judgment entered herein, at the General Term of the Supreme Court, on the 23d day of December, 1863, excepting so much thereof as directs the payment of costs and allowances to the respective parties.

- 227 Dated New York, January 22d, 1864.
 THOS. HYSLOP,
 Attorney for Virginia Levy, Respondent.

To H. W. GENET, Esq.,
 Clerk.

- “ E. B. SMITH,
 Atty. for the Congregations “Mikveh Israel”
 and “Shearith Israel,” and the Jews’ Hos-
 pital in New York.
 “ E. LAWRENCE, Esq.,
 Guardian *ad litem* of Amelia P. Levy, an
 infant Defendant.

To ROBERT B. POTTER, Esq., 228
 Atty. for Defendant Jonas P. Levy.
 " WAKEMAN & LATTING, Esqs.,
 Attys. for Defendant Isaac M. Levy.
 " E. DELAFIELD SMITH, Esq.,
 Atty. for the People of the United States.
 " A. W. BRADFORD, Esq.,
 Atty. for Defendants Amelia Levy and
 others.
 " JOSEPH H. PATTEN, Esq.,
 Atty. for the Plaintiffs.

NEW YORK SUPREME COURT.

229

ASAHEL S. LEVY and DAVID S. COD- DINGTON, acting Executors of the last Will and Testament of URIAH P. LEVY, deceased, and acting Trustees, &c., <div style="text-align: right;">Plaintiffs,</div> <div style="text-align: right;"><i>against</i></div> VIRGINIA LEVY and others, <div style="text-align: right;">Defendants.</div>	}	Notice of Appeal of the Guardian <i>ad</i> <i>litem</i> of Amelia P. Levy.
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Sirs,—Please take notice that the defendant Amelia P. Levy, by Eugene Lawrence, her guardian *ad litem*, appeals to the Court of Appeals from the judgment entered herein, on the 23d day of December, 1863, at the General Term of the Supreme Court of the First Judicial District, excepting so much of said judgment as directs the payment of costs and allowances. 230

Dated New York, January 22d, 1864.

EUGENE LAWRENCE,
 Guardian *ad litem* for Amelia P. Levy, in person.

To H. W. GENET,
 Clerk.

- 231 To JOSEPH H. PATTEN,
Atty. for Plaintiffs.
- “ A. W. BRADFORD,
Atty. for Defendants Amelia Levy and
others.
- “ WAKEMAN & LATTING,
Attys. for Defendant Isaac M. Levy.
- “ ROBERT B. POTTER,
Atty. for Defendant Jonas P. Levy.
- “ E. B. SMITH,
Atty. for the Defendants the Hebrew Con-
gregations “Shearith Israel” and “Mikveh
Israel,” and the Jewish Hospital in the city
of New York.
- 232 “ THOMAS HYSLOP,
Atty. for Defendant Virginia Levy.
- “ E. DELAFIELD SMITH,
Atty. for the Defendants The People of the
United States.

SUPREME COURT.

- | | | | |
|-----|--|---|--|
| 233 | ASAHIEL S. LEVY and DAVID S. COD-
DINGTON, acting Executors of the
last Will and Testament of URIAH
P. LEVY, deceased, and acting
Trustees of said URIAH P. LEVY,
Plaintiffs,

<i>agst.</i>

VIRGINIA LEVY and others,
Defendants. | } | Notice of Appeal
of Congregations
“Shearith Israel”
and “Mikveh Is-
rael.” |
|-----|--|---|--|

Sirs,—Please take notice that the defendants, the Hebrew Congregations “Shearith Israel and “Mikveh Israel” appeal to the Court of Appeals from the judgment entered herein, on the twenty-third day of December, 1863, at the General Term of the Supreme Court of the First Judicial

District, excepting so much of said judgment as directs the payments of costs and allowances. 234

Dated New York, January 22d, 1864.

E. B. SMITH,

Atty. for the Defendants "Shearith Israel" and
"Mikveh Israel."

To H. W. GENET, Esq.,
Clerk.

" JOSEPH H. PATTEN,
Atty. for Plaintiffs.

" A. W. BRADFORD,
Atty. for Defendants Amelia Levy and
others.

" WAKEMAN & LATTING,
Attys. for Defendant Isaac M. Levy. 235

" ROBERT B. POTTER,
Atty. for Defendant Jonas P. Levy.

" EUGENE LAWRENCE,
Guardian *ad litem* for Defendant, the infant,
Amelia P. Levy.

" THOMAS HYSLOP,
Atty. for Defendant Virginia Levy.

" E. DELAFIELD SMITH,
Atty. for the Defendants The People of the
United States.

SUPREME COURT,

236

CITY AND COUNTY OF NEW YORK.

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, acting Executors of the
last Will and Testament of URIAH
P. LEVY, deceased,
agst.

Notice of Appeal
of Defendant Isaac
M. Levy.

VIRGINIA LEVY and others.

Gentlemen,—Take notice that the defendant Isaac M.

237 Levy appeals to the Court of Appeals from all and singular
 such part or parts of the judgment rendered in this action,
 by this Court, at a General Term thereof, in the First Ju-
 dicial District, on the 30th day of November, 1863, and
 filed and entered on the 23d day of December, 1863, in as
 far as the same does not affirm altogether, but modify the
 previous judgment of this Court, made and entered in said
 action, at a Special Term thereof, on the 18th day of Feb-
 ruary, 1863, excepting, however, from the operations of this
 appeal, so much of said judgment as directs the payment
 238 of costs and allowances to the respective parties.

Dated New York, Feb. 2d, 1864.

WAKEMAN & LATTING,
 Attys. for Defendant Isaac M. Levy.

To H. W. GENET, Esq.,
 Clerk.

“ JOSEPH H. PATTEN, Esq.,
 Atty. for Plaintiffs.

“ A. W. BRADFORD, Esq.,
 Atty. for Defendants Amelia Levy *et al.*

“ THOS. HYSLOP, Esq.,
 Atty. for Virginia Levy, Defendant.

239 “ E. B. SMITH, Esq.,
 Atty. for Congregations “Shearith Israel,”
et al.

“ EUGENE LAWRENCE, Esq.,
 Guardian *ad litem* of Amelia P. Levy.

“ ROBERT B. POTTER, Esq.,
 Atty. for Defendant Jonas P. Levy.

“ E. DELAFIELD SMITH, Esq.,
 Atty. for The People of the United States.

“ ~~WAKEMAN & LATTING,~~
~~Attys. for Defendant Isaac M. Levy.~~

ASAHEL S. LEVY and others, Executors, &c., <i>agst.</i> JONAS P. LEVY, impleaded with others.	}	Notice of Appeal of Defendant Jonas P. Levy.
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Sir,—Take notice, that the above-named defendant, Jonas P. Levy, appeals to the Court of Appeals from the following parts of the judgment of the General Term, in this case entered on the 23d day of December, 1863, viz. :

First.—From that part thereof which adjudges, declares, 241
 and decrees, that the devise and bequest in the will to the people of the State of Virginia, is a good and valid devise and bequest, and that the property vested thereby in the Government of said State.

Second.—From that part thereof which adjudges, declares, and decrees, that the 200 acres of woodland of the Washington Farm is to be considered and given effect to as if it had been included in the devise and bequest in the said will of the rest and residue of said testator's real and personal property. 242

Third.—And from all those parts of said judgment reversing or modifying the judgment of the Special Term appealed from.

ROBERT B. POTTER,
 Atty. Defendant Jonas P. Levy,
 61 Wall street, N. York.

To Jos. A. PATTEN, Esq.,
 Plffs' Atty.
 HENRY W. GENET, Esq.,
 Clerk.

243

SUPREME COURT,

CITY AND COUNTY OF NEW YORK.

ASAHEL S. LEVY and DAVID S. COD-
DINGTON, acting Executors of the last
Will and Testament of URIAH P.
LEVY, deceased, and acting Trus-
tees of said URIAH P. LEVY,

against

VIRGINIA LEVY, THE PEOPLE OF THE
UNITED STATES, and others,
Defendants.

Clerk's Certificate
on Appeal.

244

STATE OF NEW YORK, }
City and County of New York, } ss.:

I Henry W. Genet, clerk of said city and county, and
clerk of the Supreme Court of said State for said city and
county, do hereby certify that the preceding consist of cer-
tified copies of the notices of appeal and judgment roll on
file in my office.

In witness whereof, I have hereunto subscribed
my name, and affixed my official seal, this
first day of March, 1864,

H. W. GENET,
Clerk.

SUPREME COURT,

245

GENERAL TERM.—December 23d, 1863.

Before SUTHERLAND, CLERKE, and MULLIN, JJ.

ASAHEL S. LEVY and DAVID S. COD-
INGTON, Acting Executors, &c., of
URIAH P. LEVY, deceased,

Appellants,

vs.

VIRGINIA LEVY *et al.*,
Respondents.

Opinion of the
Court.

By the Court: SUTHERLAND, P. J.—I agree with Judge Mullin in the conclusion to which he has arrived, that the judgment of the Special Term should be reversed or modified to a certain extent, or in certain particulars; but I do not agree with him as to the nature of such modification, or with all his reasons or grounds for coming to the conclusion that he has. 246

Some of the questions in the case are intricate and novel, and I differ from the learned Judge, and state my own conclusions with diffidence.

I think the devise and bequest in trust of the Monticello farm, and of all the residue of the testator's estate (not before disposed of) to the People of the United States, or to the United States, did not and cannot take effect, and is void; but that the subsequent devise and bequest of the same property to the People of the State of Virginia, or to the State of Virginia, is valid, and must be deemed to have taken effect. 247

I. I concur with Judge Mullin in holding that the devise to the People of the United States should be considered as a devise to the Government of the United States.

II. I also concur with him in holding that this devise to the Government of the United States, if the Government

248 can take under it, should be deemed a present devise, liable to be defeated subsequently by want of action on the part of Congress, and not a devise on condition that Congress take certain action.

A devise is not a contract, and a party holding or taking under a devise does not hold or take under a contract.

A devisee must be presumed to accept.

249 III. I also concur with Judge Mullin in holding that our statute prohibiting corporations from taking by devise, unless expressly authorized, &c., was not intended to apply either to the General or the State Governments, and does not prevent the Government of the United States taking under the devise.

IV. I also concur with him in holding, that the Government of the United States has power or capacity to take by devise generally—that is, that the Government of the United States is an artificial being, or body politic, capable of taking by grant or devise, for its own benefit, or the benefit of the people of the United States.

250 I think, too, it might take under a devise in trust for a charity to be administered or carried on in the District of Columbia, and that Congress might provide by law for the administration of such charity there; because, as to the District of Columbia, Congress may be said to have all the powers of legislation that a State Legislature has; but, in this case, the devise to the Government of the United States is a devise in trust for a charity, to be administered and carried on at Monticello, in the State of Virginia—the school is to be instituted and carried on there.

251 The Government cannot take under the devise, except upon the trust, and for the charity. The Government cannot take under the devise for its own benefit, or for the benefit of the People of the United States. The Government ought not to be deemed capable of accepting the devise or of taking under it, unless Congress has power to provide by law for the execution of the trust; that is, for the administration of the charity, or the institution or carrying on of the school in the State of Virginia. Congress has no such express power; and it is impossible to

say, that such power is to be implied as necessary to the 252
execution of any of its express powers.

Congress might have power to create a private corporation, for the purpose of banking, or any other legitimate business, in a State, which might aid Congress in executing any of its express powers; but Congress would have no power to create a private corporation, for the purpose of administering or carrying on a private charity, in a State.

My conclusion is, then, that the Government of the United States could not accept the devise, and had no power to take under it; and, therefore, that the devise to the Government of the United States is void. 253

V. But it is plain to me that the testator intended, if the Government of the United States did not, or could not, take under the devise to it, that then he intended to devise the Monticello farm and the residue of his estate, not otherwise disposed of, to the Government of the State of Virginia, in trust for the same charity.

I think the Government of Virginia had capacity to take it as a body politic, and that the Legislature of Virginia could provide by law for the institution of the school and the administration of the charity. If so, that the devise to the Government of Virginia should be deemed to have taken effect on the death of the testator, (subject, however, to be defeated by want of subsequent action by the Legislature of Virginia.) (See *Avelyn vs. Ward*, 1 Vesey, 420; *Fearn on Re.*, 406, &c. ; *Norris vs. Bexye*, 3 Kernan, 273.) 254

VI. But, perhaps, the most important question remains to be considered; which is this: Did the testator, by the following provision in his will, viz.: "I direct my executors hereinafter named, or such of them as shall qualify, to invest the funds arising from said estate in some safe paying stocks as fast as they accumulate, and to hold the whole of the property and estate hereby devised and bequeathed for said school, and in their hands, until the proper steps have been taken by Congress or by the Legislature of Virginia, or the said Hebrew Benevolent Congregation, to receive the same and discharge said executors," intend to devise, and bequeath to, and vest in, 255

256 the executors, the property and estate which had been previously devised and bequeathed for the school, until, &c. If he did, then it is probable that all the previous devises and bequests for the school, as well as for the other charities, must fall or fail, for then the devises to the Governments of the United States and of Virginia must be deemed to be conditional devises ; that is, on the conditions that Congress and the Legislature of Virginia should or did pass laws accepting the devises, &c.; and the contingency of these devises, and such devise to the executors
 257 until such contingent events happened, would render the estate and property in the hands of the executors under the devise inalienable during an uncertain period.

I believe this point has recently been decided by the Court of Appeals, in the Rose Will case (so called), but I have not seen the opinions.

Considering that the testator had previously declared in his will that none of his estate, real or personal, devised for the school, should be disposed of under any circumstances,
 258 but that the rent and income thereof was to be held inviolate for the purpose of the charity, and considering the words of present devise to the Government of the United States, and other clauses of the will, not necessary to be particularly adverted to, I think the executors can do, under a power, all and everything that he intended them to do under the provision of the will above quoted—that it not, nor does it contain an express devise to the executors ; and that a devise to them ought not to be implied, especially as such devise, if implied, would probably defeat all his devises and bequests for charity, and thus defeat his dis-
 259 position by the will of the great bulk of his estate. (See *Tucker v. Tucker*, 1 Selden, 408.)

VII. The accumulation of the funds or income directed or authorized by this provision of the will is undoubtedly void.

VIII. I think that the State of Virginia, or its government, notwithstanding her or its political condition or relation to the Government of the United States, in March, 1862, when the testator died, and his will took effect, and

notwithstanding the creation of a new State or political jurisdiction in or over a portion of the westerly part of her territory, could take under the devise to her or to her government. Monticello, where the school is to be instituted and carried on, is not, I believe, within the new State or political jurisdiction. 260

IX. The devises to the Government of the United States and of Virginia, are not within the Act of April 13th, 1860, (chap. 360, Laws of 1860,) which declares that "no person having a husband, wife, child, or parent, shall by his or her last will and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious, or missionary society, association, or corporation, in trust or otherwise, more than one-half-part of his or her estate, after, &c." Because—1st. I do not think that these Governments are corporations within the meaning of the act, even if the words benevolent, charitable, literary, &c., &c., do not qualify the word corporation; and—2d. It is very plain that the words or adjectives, benevolent, charitable, literary, &c., &c., were intended to qualify, and do qualify, the word "*corporation*," and surely, then, Governments, if corporations are not *benevolent, charitable, literary, &c.*, corporations within the meaning and intent of the act. 261 262

X. The judgment of the Special Term should, I think, be modified, in accordance with the foregoing conclusions.

(Copy.)

O. L. BARBOUR,

Reporter.

JUDGE MULLIN'S OPINION.

263

MULLIN, J.—It would be to me a source of profound regret, if the benevolent intentions of Commodore Levy, as manifested in his last will, should be defeated by reason of some rule of law which we are bound to recognize and enforce. The case is one in which it is the duty of the Court to sustain the trust in the will, if it can be done without violating some well-settled legal principle. When a testator sets apart a large share of his estate to

264 provide for the education of the orphan, it excites regret that our Legislature should have found it necessary to embarrass, if not altogether forbid, the creation of trusts necessary to carry into effect such intentions.

The object contemplated by the testator, must be carried into effect in the State of Virginia, where the premises are situate on which the school is to be located.

Part of the personal and real estate to be applied to the support of this school, is situated in this State, and hence the only power which our Courts have, is to direct that the
 265 proceeds or income of the property within their jurisdiction are paid over to the trustee, if there is one authorized to establish and carry on such school. (Story's Eq. Jr., § 1,186.)

We cannot enforce the execution of the trust, because neither the trustee, nor the subject of the trust, is within this State, and we can only inquire into the validity of the devise in question, so far as to ascertain that the object of the trust is not in violation of the laws of this State relating to the creation and transmission of estates in land, or in the conveyance of personal property. (Story's Eq. Jr., § 1,186,
 266 1,184-5.)

The Court in the State where the trust is to be executed, will determine for themselves, in view of their own laws, whether the trust is one which may be legally carried into effect. (Story's Eq. Jr., § 1,186.)

The purposes of the trust created by the will are charitable within the meaning of that term, in the statute 43 Elizabeth, chap. 4, relating to charitable uses, and as used by Judges and writers on the law of charities, ever since the passage of that statute. In the preamble of the statute
 267 referred to, gifts, devises, &c., for schools of learning, free schools, and scholars of universities, are recognized as valid. (Story's Eq. Jr., § 1,160.)

The use being charitable, and therefore legal, and a trustee designated, and a class or classes of persons named who are to be the *cestui que* use, it would seem to follow that the trust was operative, and is so unless the trustee named has not the legal capacity to accept the trust, or to take the estate devised; or unless it is in violation of our statute designed to prevent the suspension of the absolute power

of alienation beyond two lives in being at the death of the 268
testator.

The devise is to the people of the United States, and it is urged that there is no corporate body by that name, and no one or more of the people named, the devise is void for uncertainty as to the trustee.

It is true there is no corporation known as the People of the United States, but it is too clear to require argument to show that the testator intended the Government of the United States as the trustee to execute the trust.

When the person or corporation intended to be appointed 269
trustee, is misnamed, but is nevertheless so described in the will as to enable the Court to ascertain clearly the person intended, the misnomer will be disregarded, and the person answering the description will be recognized as the trustee. (1st Jarmin on Wills, 330, 331, page 339, note [2] 340, note [1].) In *Minot, et al., Executors v. The Boston Asylum and Farm School*, the testator gave the residue of his estate to the Boys' Asylum and Farm School. The executors filed their bill in equity, alleging that there was no such association or corporation, but the property was claimed by a corporation known as the Boston Asylum and Farm School for 270
Indigent Boys, and praying that the Court would ascertain to whom the property belonged. It was held that the Boston Asylum and Farm School was the devisee intended, and the property was ordered to be paid over to it. (*Tucker v. Seaman's Aid Society*, 7 Prit'd, 188; *N. Y. Institution for the Blind v. How's Ex's.*, 10 N. Y. 84, 4 Barb. 80, 4 J. C. R. 607, 4 Payne 271; *Angel & Ames on Corp.*, § 99, 185; 11 Eng. L. & E. 190.)

I entertain no doubt but that the Government of the United States is the trustee intended by the testator; nor 271
but that the United States are to be deemed and taken to be the trustee, notwithstanding the people of the United States are named.

The next objection urged to the validity of the devise is, that the United States cannot take by devise; and hence the trust must be void for the want of some person, or body corporate, to take. In this objection is involved another; which is, that the Government cannot be appointed, or, if appointed, cannot act as trustee.

272 The first objection is predicated on our statute relating to devises (3 R. S., 5th Ed., 138, § 3), which provides that "such devise may be made to every person capable by law of holding real estate, but no devise to a corporation shall be valid, unless such corporation shall be expressly authorized by its charter, or by statute, to take by devise."

The Government, whether State or National, is not a corporation within the meaning of the statute, and hence the prohibition cannot apply to them. The corporations intended to be prohibited from taking by devise are those private or municipal corporations which are created by and
273 derive all their powers from the Legislature.

But if this is not so, if governments are to be deemed and treated as corporations, I still think they are, in the absence of express prohibition in their constitutions, capable of taking by devise.

In order to ascertain what powers a corporation may lawfully exercise, we must go to its charter, if it has one; and if it has none, then to the objects for which it was created; and then such powers will be implied as are necessary to attain such objects. The charter of the Gov-
274 ernment of the united States is its Constitution. That instrument enumerates express powers delegated to its various departments, but it also gives such implied powers as may be necessary to carry express powers into effect.

Amongst its implied powers is the power to acquire title to real and personal property. This may be done under its power to declare war and to make treaties, to regulate commerce, and as a necessary incident to its power to support an army and navy. Indeed, so vitally necessary is
275 such power that Government could not be carried on without it. The mode of acquisition is not prescribed; it may acquire it, therefore, in any way in which it is competent for an individual to acquire property by gift, grant or devise.

The United States, not deriving any of its powers from or under any of the laws of this State, is not bound by any prohibition imposed by those laws or corporations. Our Courts are doubtless bound to see that foreign corporations, claiming title to property in this State, have by their char-

ters authority to take such title. But beyond this, I apprehend, we cannot go. 276

In Comyn's Digest, Title Devise, I., it is said, all persons may take by devise who can take by grant.

The United States are in the daily practice of taking lands by grant, for the purposes of light-houses, forts, arsenals, barracks, custom-houses, post offices and court-houses. If, then, the rule is a general one, that those who can take by grant are capable of taking by devise, it would seem to follow necessarily that the United States may take by devise. 277

It was the rule at common law that a corporation could not take by devise (Angel and Ames on Corp., § 177), and it is argued that this rule of the common law being in force at the time of the separation of the Colonies from Great Britain, it became a part of the common law of the United States, and hence, corporations created by or under the authority of the United States cannot take by devise. Believing as I do, that the United States is not a corporation, within the meaning of the rule of law referred to, I will not occupy more time in discussing that question,

The other objection, viz., that the United States cannot accept a trust, remains to be considered. 278

It is said, in Williams on Executors, 198, that the king may be appointed executor, as the executor holds the estate in trust for those interested in the estate. It follows that, to this extent, the king may take property in trust.

It does not seem to have been directly adjudicated in England that the king may be trustee. Yet it would seem to have been repeatedly asserted that he may be not only appointed trustee, but that equity may, if the king accepts, enforce performance of the trust. (Hill on Trustees, 61, and cases cited.) 279

Mr. Lewin, in his Treatise on Trustees, 30, says: "The sovereign may sustain the character of a trustee so far as regards capacity to take the estate and to execute the trust; but great doubts have been entertained whether the subject can, by any legal process, enforce performance of the trust."

While there may be said to be some doubt as to whether the king or queen of England may be appointed trustee, it

280 seems to me that, in this country, there is no reasonable doubt but that the Government may become a trustee.

In this State, and indeed in all civilized countries, where there are laws regulating the transmission of property by will, and in cases of intestacy, provision is necessarily made for the control and disposition of property when a person dies without heirs or next of kin. In such cases the Government appropriates it to its own use; but it takes the property subject to the equities with which it was charged in the hands of the intestate.

281 So, also, provision is made in this State for escheat of lands conveyed to aliens not authorized by law to purchase and hold lands. (1 R. S., 5th ed., 685, § 1, &c.) It is provided (3 R. S., 5th ed., p. 2, § 2), that escheated lands held by the State shall be subject to the same trusts, &c., to which they would have been subject had they descended. (See Bullard and Tiffany's Law of Trustees, 328, &c.)

282 The United States stands in the same relation to the people of the District of Columbia that this State does to its citizens. It is clothed by the Constitution with unlimited power in said District. It would seem to follow that the Government of the United States is entitled to exercise the same power over the estates of persons dying without heirs, and over escheated lands, that is exercised by this and other States in such cases.

283 This point would seem to be set at rest by the case of the Smithson bequest to the United States. I have not before me a report of that case, but my recollection is, that Mr. Smithson, an Englishman by birth, and a citizen of that country, at his death bequeathed to the United States all, or nearly all, of his property, to be applied to the establishment of an institution for the increase and diffusion of useful knowledge. The Government, through its agent, Mr. Rush, claimed the fund, and the English Courts held the Government entitled to it. Congress accepted the trust, and made provisions for carrying it into effect. This case furnishes the highest evidence of the power of the Government to take property in trust for a charitable use. Every department of the Government gave its sanction to the acceptance of the bequest in the most solemn man-

ner, and it seems to me the question should be considered 284
settled.

It is further objected, that the devise being to the People of the United States, or to such persons as the Congress shall appoint to receive the property, the title is in abeyance until Congress shall accept the trust, and appoint persons to carry it into effect, and that such suspension of the title renders void the devise.

It seems to me quite clear that it was not the intention of the donor to leave it doubtful to whom the estate should pass on his death, but that his intention was to devise the 285
property to the United States, Congress to designate the persons who should manage the fund. If I am right in this, the estate vested at once in the Government, subject to be divested by its refusal to accept the trust, or neglect to discharge its duties.

If the United States has capacity to take the estate, and should afterwards refuse to execute it, then the question will arise, whether the State of Virginia or the Hebrew Corporations will be capable of taking under the will. I do not deem it necessary to examine this question now, because I cannot doubt but that Congress will at once accept 286
and take the necessary steps to give effect to the benevolent and generous intentions of the testator. But if Congress refuse or neglect to accept, and the State of Virginia, by reason of her complicity in the rebellion against the United States, be incapable of taking the estate, and if it should happen that the corporations should be incapable of taking, a Court of Equity would appoint some person to discharge the duties of the trust. The rule of equity is, that when a valid trust is created, it shall not fail for want of a trustee.

It is urged by counsel that the trust is void, as creating 287
a perpetuity, and that the trust is not one authorized by our statutes.

The Court of Appeals has held on several occasions that devises to a charitable use are valid, notwithstanding both of the difficulties suggested. (*Williams v. Williams*, 4 Seld., 524; *Owens v. Missionary Society of the M. E. Church*, 4 Kern., 380; *Auburn Theological Seminary v.*

- 288 Kellogg, 16 N. Y., 83; Leonard v. Burr, 18 N. Y., 96; Beekman v. Bonson, 23 N. Y., 298.)

The clause of the will that directs the executors to accumulate this fund until the proper steps have been taken by Congress, or the Legislature of Virginia, or the Hebrew Benevolent Associations, to receive the same and discharge said executors, may be void under the statute of this State. 3 R. S., 5 Ed., 13, § 37; same, pp. 75-6, §§ 1 to 5, (inclusive.)

- 289 But, if void, it does not impair the validity of the devise. It was held in Williams v. Williams, cited *supra*, that when a legacy is given to a religious corporation for a purpose authorized by law, but with a direction that it accumulate until it reaches a certain sum before its income shall be expended, the direction only is void, and the legacy is not defeated. It is immaterial, therefore, whether the clause in question is or is not valid.

- 290 Without examining any other of the numerous questions presented by the respective counsel, I am constrained to hold that that part of the judgment of the Special Term which held the devise to the United States void should be *reversed*, and a decree entered declaring the *validity of the trust*; and that the residue of the judgment of the Special Term be affirmed.

(Copy.)

O. S. BARBOUR,
Reporter.

